

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

JAMES R. GLIDEWELL DENTAL CERAMICS,)
INC., DBA GLIDEWELL LABORATORIES,)
)
PLAINTIFF/COUNTER-DEFENDANT,) CASE NO.
) SACV11-01309-DOC
v.) (ANx)
)
KEATING DENTAL ARTS, INC.,)
)
DEFENDANT/COUNTER-PLAINTIFF.)
_____)

VIDEOTAPED DEPOSITION OF MICHAEL DITOLLA
TAKEN TUESDAY, OCTOBER 2, 2012
IRVINE, CALIFORNIA

Reported by Audra E. Cramer, CSR No. 9901

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10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 VIDEOTAPED DEPOSITION OF MICHAEL DITOLLA, TAKEN ON BEHALF OF THE DEFENDANT/COUNTER-PLAINTIFF, AT 9:38 A.M. 2 TUESDAY, OCTOBER 2, 2012, AT 2040 MAIN STREET, IRVINE, 3 CALIFORNIA, BEFORE AUDRA E. CRAMER, CSR NO. 9901, 4 PURSUANT TO NOTICE.</p> <p>5 APPEARANCES OF COUNSEL</p> <p>6 FOR PLAINTIFF/COUNTER-DEFENDANT: 7 LEONARD TACHNER PLC 8 BY: LEONARD TACHNER, ESQUIRE 9 17961 SKY PARK CIRCLE 10 SUITE 38-E 11 IRVINE, CALIFORNIA 92614-6364 12 (949) 752-8525 13 ltachner@aol.com</p> <p>14 FOR DEFENDANT/COUNTER-PLAINTIFF: 15 KNOBBE MARTENS OLSON & BEAR LLP 16 BY: DAVID G. JANKOWSKI, ESQUIRE 17 RUSTIN MANGUM, ESQUIRE 18 2040 MAIN STREET 19 14TH FLOOR 20 IRVINE, CALIFORNIA 92614 21 (949) 760-0404 22 david.jankowski@kmob.com rustin.mangum@kmob.com</p> <p>23 ALSO PRESENT: 24 CHUCK GOSWITZ, VIDEOGRAPHER</p> <p style="text-align: right;">Page 2</p>	<p>1 EXHIBITS (CONTINUED)</p> <p>2 NO. PAGE DESCRIPTION</p> <p>3 Exhibit 17 176 LETTER DATED 8/7/12 TO JIM SHUCK FROM NICOLE FALLON</p> <p>4 Exhibit 18 179 DENTAL PRODUCTS REPORT ARTICLE ON GLIDEWELL</p> <p>5 Exhibit 27 189 THREE-PAGE ORAL ARTS DOCUMENT BATES KDA-002350 THRU 352</p> <p>6 Exhibit 28 191 DOCUMENT BATES KDA-002446 THRU 2447</p> <p>7 Exhibit 32 193 DOCUMENT BATES KDA-002237 THRU 2239</p> <p>8 Exhibit 33 195 ONE-PAGE DOCUMENT BATES KDA-002359</p> <p>9 Exhibit 45 198 DOCUMENT BATES KDA-002770 THRU 2772</p> <p>10 Exhibit 46 214 DOCUMENT BATES KDA-002832 AND 2833</p> <p>11 Exhibit 47 216 DOCUMENT BATES KDA-002758</p> <p>12 Exhibit 48 218 FIVE-PAGE DOCUMENT BATES GL-226, PAGES 1 THRU 5 OF 5</p> <p>13 Exhibit 49 221 13-PAGE NORTHCOAST RESEARCH DOCUMENT, VARIOUS PAGES</p> <p>14 Exhibit 50 222 GLIDEWELL'S INITIAL DISCLOSURES PURSUANT TO 15 FEDERAL RULES OF CIVIL 16 PROCEDURE 26</p> <p>17 Exhibit 35 229 12-PAGE, TWO-SIDED GLIDEWELL LAB DOCUMENT</p> <p style="text-align: right;">Page 4</p>
<p>1 INDEX</p> <p>2 WITNESS</p> <p>3 MICHAEL DITOLLA</p> <p>4</p> <p>5 EXAMINATION PAGE</p> <p>6 MR. JANKOWSKI 6 (P.M. SESSION) 101</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9 NO. PAGE DESCRIPTION</p> <p>10 Exhibit 43 10 DEPOSITION NOTICE OF DR. MICHAEL DITOLLA</p> <p>11 Exhibit 44 103 TWO-PAGE WEBSITE PRINTOUT</p> <p>12 Exhibit 36 107 GLIDEWELL LABORATORIES ORG CHART</p> <p>13 Exhibit 8 118 20-PAGE COLOR GLIDEWELL LAB INTERNET PRINTOUT RE UPDATED VIDEO</p> <p>14 Exhibit 9 151 TWO-PAGE COLOR BRUXZIR INTERNET PRINTOUT</p> <p>15 Exhibit 12 154 AUTHORIZED LABORATORIES PROGRAM BENEFITS COLOR PRINTOUT</p> <p>16 Exhibit 13 157 BRUXZIR COLOR WEB PRINTOUT</p> <p>17 Exhibit 15 166 SIX-PAGE GLIDEWELL COLOR BROCHURE</p> <p>18 Exhibit 19 171 PR WEB MULTIPAGE DOCUMENT</p> <p>19 Exhibit 26 173 ONE-PAGE TECH SPECS AXIS DOCUMENT</p> <p style="text-align: right;">Page 3</p>	<p>1 IRVINE, CALIFORNIA;</p> <p>2 TUESDAY, OCTOBER 2, 2012, 9:38 A.M.</p> <p>3</p> <p>4 THE VIDEOGRAPHER: Good morning. This is</p> <p>5 Tape No. 1 of the videotaped deposition of</p> <p>6 Dr. Mike DiTolla taken by Defendants and</p> <p>7 Counter-plaintiffs in the matter of James R. Glidewell</p> <p>8 Dental Ceramics, Inc. et al. v. Keating Dental Arts,</p> <p>9 Inc. in the United States District Court for the</p> <p>10 Central District of California, Southern Division,</p> <p>11 Case No. SACV11-01309-DOC.</p> <p>12 This deposition is being held at 2040 Main</p> <p>13 Street, 14th Floor, in Irvine, California. Today's date</p> <p>14 is Tuesday, October 2, 2012. The time on the video</p> <p>15 screen is 9:38 a.m.</p> <p>16 My name is Chuck Goswitz. The court reporter</p> <p>17 is Audra Cramer. We are both with Digital Evidence</p> <p>18 Group.</p> <p>19 Will counsel please introduce themselves for</p> <p>20 the record.</p> <p>21 MR. JANKOWSKI: David Jankowski of Knobbe</p> <p>22 Martens Olson & Bear for Defendant Keating Dental Arts,</p> <p style="text-align: right;">Page 5</p>

Pages 2 to 5

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 and with me is my associate Rustin Mangum.
 2 MR. TACHNER: I am Leonard Tachner. I am the
 3 attorney for the Plaintiff Glidewell Laboratories.
 4 THE VIDEOGRAPHER: Thank you.
 5 Will the court reporter please swear in the
 6 witness.
 7
 8 MICHAEL DITOLLA,
 9 having been first duly sworn, was
 10 examined and testified as follows:
 11
 12 EXAMINATION
 13 BY MR. JANKOWSKI:
 14 Q. Good morning, Dr. DiTolla.
 15 A. Good morning.
 16 Q. Again, my name is David Jankowski. I'm an
 17 attorney representing the defendant/counterclaimant in
 18 this case Keating Dental Arts, and I'll be asking you
 19 some questions today.
 20 Can you please state your full name for the
 21 record.
 22 A. Michael Christopher DiTolla.

Page 6

1 Q. And what is your occupation?
 2 A. I'm a dentist.
 3 Q. What is your current employer?
 4 A. Glidewell Laboratories.
 5 Q. And have you ever been deposed before?
 6 A. No.
 7 Q. Okay. I'm going to go through some
 8 ground rules just to familiarize yourself --
 9 A. Okay.
 10 Q. -- with the process, and if you have any
 11 questions, you know, feel free to ask me, and I can get
 12 them worked out for you.
 13 First of all, do you understand the oath that
 14 the court reporter just administered to you?
 15 A. I believe so, yes.
 16 Q. And although this deposition is being taken in
 17 a conference room at the law offices of Knobbe Martens
 18 in Irvine, California, it has the same force and effect
 19 as if you were testifying in a court of law in front of
 20 a judge. Do you understand that?
 21 A. Yes.
 22 Q. I'm going to be asking you questions, and you

Page 7

1 are going to be providing answers to my questions. You
 2 must answer truthfully. Do you understand that?
 3 A. Yes.
 4 Q. This deposition is being recorded on audiotape,
 5 on videotape and stenographically by a court reporter.
 6 The court reporter can only record actual words, so
 7 please answer with spoken words rather than a nod or
 8 another nonverbal response. Do you understand?
 9 A. Uh-huh, yes.
 10 Q. Good catch.
 11 Please wait until I've completed a question
 12 before you begin your answer, because the court reporter
 13 cannot capture what we say if we talk over one another.
 14 Okay?
 15 A. Okay.
 16 Q. If I ask a question and it's unclear to you in
 17 some way, please let me know, and I can try to address
 18 it. If you do not ask for clarification, I will assume
 19 that you understand what I am asking. Is that fair?
 20 A. Yes.
 21 Q. From time to time your attorney Mr. Tachner may
 22 be making spoken objections. Unless your attorney

Page 8

1 instructs you not to answer a question, you must still
 2 answer my question. Do you understand that?
 3 A. Yes.
 4 Q. If you'd like to take a break at any time
 5 during the deposition, please say so, and we'll take a
 6 break at the next convenient stopping point. Do you
 7 understand?
 8 A. Uh-huh. Yes, I do.
 9 Q. I do request that you not ask for a break while
 10 a question is pending. We'll take breaks after
 11 questions have been answered. Is that fair?
 12 A. That's fair.
 13 Q. Are you taking any prescription medication or
 14 other drugs that may impair your ability to testify
 15 truthfully today?
 16 A. I am not.
 17 Q. Is there any reason you can't give full and
 18 truthful testimony here today?
 19 A. No, there isn't.
 20 MR. JANKOWSKI: I'm going to have the
 21 court reporter mark as Exhibit 43 Keating Dental Arts,
 22 Inc.'s deposition notice of Dr. Michael DiTolla.

Page 9

Pages 6 to 9

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 (Whereupon, Exhibit 43 was marked 2 for identification.) 3 THE WITNESS: Uh-huh. 4 This is mine to keep? 5 MR. JANKOWSKI: You get to keep it during the 6 deposition, and then the court reporter will take 7 custody of it. 8 THE WITNESS: Okay. 9 BY MR. JANKOWSKI: 10 Q. Have you seen this document before? 11 A. I think it might have been attached to an 12 e-mail that was sent to me, but I don't remember if I 13 saw this exact document or not. 14 Q. Okay. Well, basically, this is the formal 15 document which is being served in the lawsuit in order 16 to notice today's deposition. 17 A. Okay. 18 Q. And it identifies you as the witness to provide 19 information. 20 A. Okay. 21 Q. I don't know if you've talked about this with 22 your attorney, but there are two different types of</p> <p style="text-align: right;">Page 10</p>	<p>1 the deposition of Mr. Shuck based upon 30(b)(6) resulted 2 in the conclusion that Dr. DiTolla would also be 3 designated as a 30(b)(6) witness on some issues. 4 MR. JANKOWSKI: Do you know what -- I mean, I 5 haven't heard what issues he would be designated on, but 6 it's something that's being considered or... 7 MR. TACHNER: I think they were related to the 8 technology of dentistry as it relates to the issues in 9 this case, basically. 10 Also, Dr. DiTolla had done some DVDs -- 11 tutorial DVDs for dentists to familiarize them with the 12 BruxZir products and also wrote some articles in the 13 same vein, and I believe that when Mr. Shuck was asked 14 about those, he deferred to Dr. DiTolla. 15 MR. JANKOWSKI: Okay. We'll address that, I 16 guess, when the time comes. 17 BY MR. JANKOWSKI: 18 Q. Dr. DiTolla, let me just ask you a little bit 19 about your background. Can you just give me your 20 educational background, please. 21 A. I went to -- did my undergrad at Occidental 22 College in Los Angeles and then went to dental school at</p> <p style="text-align: right;">Page 12</p>
<p>1 depositions that can be noticed in a case like this: 2 There are fact depositions and so-called Rule 30(b)(6) 3 depositions. That's where you can request testimony 4 from Glidewell as an entity, for example. 5 Are you aware that, I think, your colleague 6 Mr. Shuck testified last week? 7 A. Uh-huh. Yes. 8 Q. And I believe that was in the context of a 9 30(b)(6) deposition -- 10 A. Okay. 11 Q. -- where he was providing testimony on behalf 12 of Glidewell as an entity. So I just want to make sure 13 that we understand the ground rules here that here 14 you're being noticed as a fact witness. You're not 15 testifying on behalf of Glidewell, but, rather, on your 16 own behalf. 17 A. Okay. 18 MR. JANKOWSKI: And I did see, Mr. Tachner, a 19 communication somewhere where it sounded like Glidewell 20 might have been designating or thinking about 21 designating Dr. DiTolla as a 30(b)(6) on some topics? 22 MR. TACHNER: Yes, that's correct. I believe</p> <p style="text-align: right;">Page 11</p>	<p>1 University of the Pacific, School of Dentistry, in 2 San Francisco. Graduated in 1988 and then came down 3 here and was in private practice in Orange County for -- 4 well, until 2001. 5 And then in 2001 I had the opportunity to 6 become part of the Glidewell team. So I sold my 7 practice and moved inside of Glidewell Laboratories and 8 started practicing dentistry there. 9 Q. So that transition to Glidewell happened in the 10 calendar year 2001. 11 A. Yeah, I think it was February 5, 2001. 12 Q. And what year did you graduate from Occidental 13 College? 14 A. Actually, I got into dental school after my 15 junior year, so that would have been 1985. So I didn't 16 actually graduate. I got accepted before I graduated. 17 Q. So 1985 was the completion of your junior year 18 at Occidental College? 19 A. Uh-huh. 20 Q. Wasn't President Obama at Occidental College 21 for a little bit there? 22 A. He was. That's our claim to fame.</p> <p style="text-align: right;">Page 13</p>

Pages 10 to 13

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 Q. Did you overlap with him?
 2 A. No. No. I don't think so. I think I'm --
 3 Q. A little younger than him.
 4 A. -- a little younger than him, right.
 5 Q. It's close though.
 6 And then University of the Pacific, you were in
 7 the dental school there; correct?
 8 A. Yes.
 9 Q. And then how many year program is that?
 10 A. That's a three-year program. I think it's the
 11 only one left in the nation that's three years instead
 12 of four. We go year-round.
 13 Q. So you were really going at a fast clip, three
 14 years at Occidental College, then three years --
 15 A. Yeah, it's now an official program. If you
 16 know, like I did, that you want to be a dentist after
 17 high school, you OP -- they have you go to their
 18 undergrad in Stockton and then to their dental school,
 19 and you're done in six years.
 20 Q. Is the dental school also located in Stockton?
 21 A. No. It's in San Francisco.
 22 Q. That's in San Francisco.

Page 14

1 So then you finished at University of the
 2 Pacific in 1988?
 3 A. Uh-huh, yes.
 4 Q. And I believe I saw somewhere that -- did you
 5 also do education in Nevada?
 6 A. Yes. I took some postgraduate education at the
 7 Las Vegas Institute for Cosmetic Dentistry.
 8 Q. When did you study at the Las Vegas Institute?
 9 A. 1995.
 10 Q. So was there any degree conferred, or was that
 11 just --
 12 A. No, there's not a degree there. That's just a
 13 clinical course where you're working on live patients.
 14 So it's a unique type of education, but there's no
 15 degree given for that.
 16 Q. Now, your education at University of the
 17 Pacific also would have included some clinical courses
 18 and some nonclinical; is that correct?
 19 A. Yes, that's correct.
 20 Q. And the Las Vegas Institute, it was all
 21 clinical courses?
 22 A. That's correct.

Page 15

1 Q. And what courses did you take at the Las Vegas
 2 Institute?
 3 A. All the courses that were available at the time
 4 were centered around cosmetic dentistry. So it all had
 5 to do with porcelain veneers, all ceramic crowns, things
 6 like that, things to improve the appearance of the
 7 patient.
 8 Q. And at that time you were in private practice;
 9 correct?
 10 A. Correct.
 11 Q. And you said you were in private practice --
 12 was that in Orange County?
 13 A. Yes.
 14 Q. What city did you practice out of?
 15 A. I was in -- actually, I started in Los Angeles
 16 County in Downey, and then we moved to Tustin in
 17 probably 1995, right about that same time, '94, '95.
 18 Q. So you were in Downey from 1988 to 1995?
 19 A. That's correct.
 20 Q. And then you were in Tustin from 1995 to 2001.
 21 A. Uh-huh, correct.
 22 Q. Now, your private practice in Tustin, was it

Page 16

1 focused on cosmetic dentistry?
 2 A. It was focused on cosmetic dentistry, but we
 3 still treated patients in all different phases of
 4 dentistry.
 5 Q. And how about when you were in private practice
 6 in Downey?
 7 A. No, that was more of a basic restorative
 8 dentistry practice.
 9 Q. So high level, you can say -- for the seven
 10 years at Downey, you were providing normal -- I
 11 shouldn't call it normal --
 12 A. Typical.
 13 Q. -- typical dentistry services, whereas in
 14 Tustin you were still providing typical dentistry
 15 services, but then you also had -- the cosmetic
 16 dentistry aspect of your practice was enhanced; is that
 17 fair?
 18 A. Yes. In fact, those cosmetic procedures that I
 19 learned in Las Vegas were not being taught in dental
 20 school while I was still in dental school and still
 21 currently are not being taught -- or they're being
 22 taught academically, but they don't get to treat

Page 17

Pages 14 to 17

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 patients like that.</p> <p>2 So my intent was to improve my skill set by</p> <p>3 going out there and learning how to do something that I</p> <p>4 wasn't taught to do in school. The materials that we</p> <p>5 used for that didn't even exist when I was in school.</p> <p>6 So...</p> <p>7 Q. What materials are you referring to?</p> <p>8 A. Primarily IPS Empress.</p> <p>9 Q. Is that one material, IPS Empress?</p> <p>10 A. Yes, that's one material.</p> <p>11 Q. What is IPS Empress?</p> <p>12 A. Empress -- it's just referred to as Empress,</p> <p>13 usually. IPS would be the official name.</p> <p>14 But Empress is an all-ceramic material from</p> <p>15 Ivoclar Vivadent that can be made very thin, about 6/10</p> <p>16 of a millimeter, and for many, many years was the one</p> <p>17 material that most dentists used for doing porcelain</p> <p>18 veneers for a cosmetic change on a patient's smile.</p> <p>19 Q. And this is an example of a material that</p> <p>20 really didn't exist while you were in dental school at</p> <p>21 University of the Pacific?</p> <p>22 A. Yes, it did not exist when I was -- maybe in</p> <p style="text-align: right;">Page 18</p>	<p>1 "porcelain-fused-to-metal crowns." That's sometimes</p> <p>2 shortened to PFM crowns?</p> <p>3 A. That's correct.</p> <p>4 Q. I've noticed a lot of little acronyms and</p> <p>5 jargon in --</p> <p>6 A. I was trying to stay away from that for your</p> <p>7 clarification.</p> <p>8 Q. I appreciate that actually. That's helpful.</p> <p>9 And to the extent you do use an acronym -- you</p> <p>10 can feel free to use one, but I'll try to bring out --</p> <p>11 A. Okay.</p> <p>12 Q. -- the fuller meaning if I hear one being used.</p> <p>13 When you were in dental school or, as you said,</p> <p>14 IPS Empress was a material that wasn't being used, are</p> <p>15 there other materials you can think of that weren't</p> <p>16 being used back at that time frame that are being used</p> <p>17 today?</p> <p>18 A. Do you mean restorative materials such as</p> <p>19 porcelains, or you mean in all of dentistry?</p> <p>20 Q. In all of dentistry.</p> <p>21 A. Oh, definitely, yes, there's certainly</p> <p>22 materials that exist today in a different form or that</p> <p style="text-align: right;">Page 20</p>
<p>1 Europe, but not in the United States. We never saw it</p> <p>2 here.</p> <p>3 Q. Do these materials go through a certification</p> <p>4 program with the federal government before you're</p> <p>5 allowed to use them with patients?</p> <p>6 A. I would assume so, but I think most dentists</p> <p>7 accept that some sort of testing and regulation has been</p> <p>8 done before we get to use them. But -- yeah, I would</p> <p>9 assume they do. I didn't check before, you know, we'd</p> <p>10 start using them.</p> <p>11 It was similar to a lot of other ceramic</p> <p>12 materials that we were using at the time. It just</p> <p>13 happened to be more translucent, and so it was prettier</p> <p>14 once it was on the teeth.</p> <p>15 Q. And what was the material that was used prior</p> <p>16 to IPS Empress for porcelain veneers?</p> <p>17 A. A broad range of porcelains just known as</p> <p>18 feldspathic porcelains with trade names like Ceramco and</p> <p>19 things like that, the same porcelains that have been</p> <p>20 used in dentistry on porcelain-fused-to-metal crowns</p> <p>21 for, you know, the 20 years before that.</p> <p>22 Q. You just used the phrase</p> <p style="text-align: right;">Page 19</p>	<p>1 didn't exist at all. There's products. There's</p> <p>2 technology such as diode lasers that we have today that</p> <p>3 did not exist when I was in dental school.</p> <p>4 And certainly most of the restorative</p> <p>5 material -- a lot of the restorative materials we have</p> <p>6 in dentistry today -- we have a new one called</p> <p>7 Lava Ultimate that didn't exist three years ago from</p> <p>8 3M ESPE that now exists today.</p> <p>9 Q. It's called Lava Ultimate?</p> <p>10 A. Uh-huh, yes.</p> <p>11 Q. And what is Lava Ultimate?</p> <p>12 A. Lava Ultimate is a resin polymer crown that's</p> <p>13 been infiltrated with ceramic particles.</p> <p>14 Q. So Lava Ultimate is being used today; correct?</p> <p>15 A. It is being used today.</p> <p>16 Q. What makes Lava Ultimate a wonderful material</p> <p>17 to use today?</p> <p>18 A. According to the manufacturer, it's the fact</p> <p>19 that it's a high-strength, tooth-colored crown that</p> <p>20 won't chip as much as porcelain, for example.</p> <p>21 And, also, its main use right now is for</p> <p>22 dentists who own a CEREC machine in their office, which</p> <p style="text-align: right;">Page 21</p>

Pages 18 to 21

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 is a machine that will make a chairside crown within an</p> <p>2 hour or so for a patient so the patient can leave with a</p> <p>3 permanent crown that day instead of a temporary crown.</p> <p>4 So when the dentist takes a digital impression,</p> <p>5 they mill a Lava Ultimate crown, and that crown at this</p> <p>6 point does not have to go into an oven or be stained.</p> <p>7 It can simply be polished and put right into the</p> <p>8 patient's mouth.</p> <p>9 So 3M is finding their biggest use for this</p> <p>10 material with the dentists who are making crowns in</p> <p>11 their own offices. We haven't seen a lot of demand for</p> <p>12 it at the laboratory yet, but the dentist with the</p> <p>13 chairside crown machines are doing the majority of the</p> <p>14 Lava Ultimate right now.</p> <p>15 Q. When you say "chairside crown machine," that</p> <p>16 just means a machine that's going to be right there in</p> <p>17 the dentist's office?</p> <p>18 A. Yeah, the dentist purchases a machine --</p> <p>19 there's two manufacturers -- and they take a digital</p> <p>20 impression of the patient's tooth once they prepare it</p> <p>21 for a crown, and then they make a crown themselves</p> <p>22 chairside and then bond it into the patient's mouth at</p> <p style="text-align: right;">Page 22</p>	<p>1 certain tooth and then sends the impression in with the</p> <p>2 prescription into a dental laboratory, who then fulfills</p> <p>3 that prescription.</p> <p>4 Q. And Glidewell Laboratories is one example of a</p> <p>5 lab that provides that kind of service; correct?</p> <p>6 A. Correct.</p> <p>7 Q. So today you're still seeing patients; correct?</p> <p>8 A. Today I still see patients. Most of them are</p> <p>9 for our marketing efforts, you know, for things that we</p> <p>10 do -- or for educational purposes where we want to show</p> <p>11 dentists what this crown or that brand of crown would</p> <p>12 look like in the mouth in case they're considering using</p> <p>13 them or they're on the fence between which one they</p> <p>14 should use.</p> <p>15 Q. Do you still have your office in Tustin?</p> <p>16 A. No. I sold that in 2001 when I came over.</p> <p>17 Q. So your practice as a dentist when you're</p> <p>18 performing it is performed at Glidewell's facilities?</p> <p>19 A. That's correct.</p> <p>20 Q. Is that physically in the same location where</p> <p>21 the laboratory is where they're creating crowns?</p> <p>22 A. We have several buildings, and yes, I'm in one</p> <p style="text-align: right;">Page 24</p>
<p>1 that same appointment so the patient doesn't have to</p> <p>2 wear a temporary around for two weeks.</p> <p>3 Q. So using a more conventional process, how long</p> <p>4 does it take between imaging tooth and the patient</p> <p>5 getting a permanent crown?</p> <p>6 A. Well, typically, imaging is not done.</p> <p>7 Typically, we use a polyvinyl material to take an</p> <p>8 impression. But for the last 20 years it's been a</p> <p>9 two-week turnaround period from the time a dentist sends</p> <p>10 an impression to a dental laboratory like ours, and</p> <p>11 we'll typically send it back in about a week, and</p> <p>12 they'll have the patient back maybe a few days after</p> <p>13 that. So it's usually a two-week turnaround period.</p> <p>14 Q. And while that two weeks is happening, work is</p> <p>15 being done at a dental lab somewhere; correct?</p> <p>16 A. Correct.</p> <p>17 Q. All right. And just so that we're on the same</p> <p>18 page here, dental labs then are in the business of</p> <p>19 supporting the work of dentists who are providing these</p> <p>20 patients with crowns, for example; correct?</p> <p>21 A. Yes. We follow -- the dentist fills out a</p> <p>22 prescription and asks for a specific material on a</p> <p style="text-align: right;">Page 23</p>	<p>1 of them where crowns are made, yes.</p> <p>2 Q. So I assume this is a portion of the building</p> <p>3 which is modeled to look like a dental office; is that</p> <p>4 correct?</p> <p>5 A. It does, yeah. When you walk inside, it does.</p> <p>6 Q. I say that because I would expect patients</p> <p>7 going to the dentist want to get the dentist experience</p> <p>8 that they're expecting.</p> <p>9 A. Yeah, they get the dentist experience, and</p> <p>10 because everything's being filmed, there's a high burden</p> <p>11 for me to get it right while we're filming it. So we're</p> <p>12 doing things -- we want to set a good example for our</p> <p>13 dentist clients out there. We don't want to do anything</p> <p>14 sloppy and let them think that's okay, because that's</p> <p>15 not in the patient's best interest.</p> <p>16 Q. Sure. And you say it's being filmed because,</p> <p>17 as you said, this is for marketing purposes as well for</p> <p>18 Glidewell?</p> <p>19 A. And educational purposes. The dentist -- we</p> <p>20 actually write continuing education tests where the</p> <p>21 dentist can watch a video and then go online and answer</p> <p>22 10 questions and get a unit of CE credits for their</p> <p style="text-align: right;">Page 25</p>

Pages 22 to 25

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 license renewal.
 2 Q. I see. Okay.
 3 So Glidewell is the creator of the educational
 4 videos; is that correct?
 5 A. Yes.
 6 Q. So the patients that are having this done, they
 7 obviously know that it's going to be part of something
 8 beyond them receiving dental services; correct?
 9 A. Potentially, yes.
 10 Q. Why do you say "potentially"?
 11 A. Because not every case turns out as nice as you
 12 would want it to. You know, you find out all of a
 13 sudden that the woman you're working on has a bleeding
 14 disorder that she didn't know about, and it's just going
 15 to be a compromised case, and the gums are bleeding all
 16 over the place, and it's difficult to show what you're
 17 doing when you tell her to stop bleeding and she won't.
 18 (Laughter.)
 19 THE WITNESS: You can't command them to do it.
 20 So there's just times where cases don't --
 21 wouldn't make good filmed cases for educational
 22 purposes.

Page 26

1 Or sometimes in the back of the mouth -- it's
 2 very difficult to get the camera towards the back of the
 3 mouth, especially on a patient who has a limited
 4 opening, and you just can't see anything. So we film it
 5 just to film it, because the couple times we've
 6 forgotten to film it, everything turns out perfect.
 7 BY MR. JANKOWSKI:
 8 Q. Right, right.
 9 A. So it's Murphy law. So we film everything,
 10 just to be safe.
 11 Q. Okay. So when you said "potentially" before,
 12 the "potentially" meaning it may or may not be used for
 13 educational or marketing purposes?
 14 A. Correct. It will get filmed, but it may or may
 15 not be used.
 16 Q. So it's not "potentially" in the sense that the
 17 client goes in knowing it's going to be filmed, for
 18 example?
 19 A. No. Everybody who goes in knows it's going to
 20 be filmed.
 21 Q. In fact, I imagine they sign some sort of
 22 waiver saying --

Page 27

1 A. They do, but you just don't want to spring that
 2 on somebody. The women especially, sometimes, who agree
 3 to it are a little flustered afterwards when they see
 4 their mouth blown up on the size of a TV screen and they
 5 can see nose hairs sticking out, for example, or their
 6 mustache.
 7 Q. Right.
 8 A. That doesn't go over well.
 9 Q. Do you have photoshopping you can do to --
 10 A. Well, you know, actually, that's the reason why
 11 I love video is because you can't photoshop it. So
 12 there's a lot of dentists who -- and companies, dental
 13 companies, who run advertisements, and we do too, of
 14 still pictures, but those can always be photoshopped.
 15 I like our videos that we send out to dentists
 16 because you can't photoshop video. What you see is what
 17 you get. This is really happening, and it looks like it
 18 looks. So there's a certain authenticity to that
 19 because you can't photoshop it.
 20 Q. Right, right. So when you're doing a procedure
 21 for one of these marketing videos, typically, who's in
 22 the room?

Page 28

1 A. Usually just myself, my dental assistant, the
 2 patient and then our videographer, the guy who films it
 3 and then edits it as well.
 4 Q. And how often are you filming patient
 5 procedures?
 6 A. Usually every Tuesday and Wednesday.
 7 Q. How many procedures per day?
 8 A. Two. Usually one in the morning, one in the
 9 afternoon.
 10 But a lot of what we do is different than in a
 11 regular dental office. For example, if you wanted to
 12 show a case to a dentist where you're doing two front
 13 crowns, you know, this is a case where it's got to look
 14 good for the patient, and dentists will often call and
 15 say, "What crowns would look the best there?"
 16 So we do a video where we try in a set of maybe
 17 Empress crowns, maybe e.max crowns and maybe some
 18 BruxZir crowns as well, and the dentist gets an
 19 opportunity to see what all three of these different
 20 crowns would look like. In addition, some of the
 21 research projects we do, I may have five or six
 22 different sets of crowns to try in that were

Page 29

Pages 26 to 29

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 manufactured in different ways, and we as a company just 2 want to see which ones look better.</p> <p>3 So we usually end up seeing two patients a day 4 because, unlike a regular patient where the laboratory 5 makes one crown and you put it in and it's done, we 6 might be trying in 20 crowns.</p> <p>7 Q. When you say trying 20, are you saying 8 20 crowns on one patient?</p> <p>9 A. Yes.</p> <p>10 Q. So you'd be trying them sequentially?</p> <p>11 A. Yes.</p> <p>12 Q. Wow. How long does that take?</p> <p>13 A. A while. There's a reason the patient is 14 getting these two crowns for free, and it's because of 15 the time involved.</p> <p>16 Q. I see.</p> <p>17 A. There is no free dentistry. No money's going 18 to change hands, but you're going to have to lay there 19 for a while while we try these in and take them out.</p> <p>20 Q. I see.</p> <p>21 A. But we use a long-lasting anesthetic, so they 22 stay numb. But, yeah, it can take a while. It can take</p> <p style="text-align: right;">Page 30</p>	<p>1 Q. Do you ever have times when you're running out 2 of patients; I mean, there just aren't any Glidewell 3 employees who need the work done that you want to 4 perform?</p> <p>5 A. No. The exact opposite. We have plenty of 6 employees, and for them it's like winning the lottery. 7 You know, it's like getting the golden ticket if they 8 get to come in and get \$4,000 worth of stuff done 9 probably the best that it can be done since we're 10 filming it and we have on-staff technicians helping to 11 make it look as good as possible.</p> <p>12 So we have plenty of people who need stuff.</p> <p>13 Q. How do you get involved in this? You know, 14 within the company is there like a website you go to and 15 you --</p> <p>16 A. There is. There is. And we have a 17 hygienist -- I brought a dental hygienist on many years 18 ago, and so we actually do cleanings for the employees, 19 low-rate cleanings, basically at cost, so that patients 20 don't -- so employees don't have to go out and get their 21 teeth cleaned at an outside dentist.</p> <p>22 But it's really -- selfishly, it's more so that</p> <p style="text-align: right;">Page 32</p>
<p>1 a couple hours.</p> <p>2 Q. So that's the incentive for the patient to go 3 through this, among other things, is they're getting the 4 crown for free?</p> <p>5 A. They're getting the crown for free. They're 6 all employees, so they feel like maybe they're doing 7 something that will benefit the company as well.</p> <p>8 Q. Okay. So the patients that you're putting the 9 crown on are Glidewell employees?</p> <p>10 A. That's correct.</p> <p>11 Q. Oh, I see.</p> <p>12 A. It would be difficult to put a regular patient 13 through all this, I would think, because we -- there's 14 times where we'll try them in and we'll even like how 15 one or two of the sets of the crowns look, but we'll put 16 the temporaries back on again and go do some staining on 17 the crowns, which might take two hours.</p> <p>18 So with the patients in the building, we can 19 send them back to work with the temporaries, and they 20 can come back, walk up one flight of stairs two hours 21 later and put it back in. It would be a logistical 22 nightmare to try to do this on an outside patient.</p> <p style="text-align: right;">Page 31</p>	<p>1 while their being cleaned, we can see, "Oh, you need a 2 crown here and a crown here. That'll be perfect for 3 this e.max video we want to make." And so the hygienist 4 keeps a list of their needs and their existing 5 conditions, and then we can pick from that.</p> <p>6 We used to screen the new employees that we 7 would hire on Monday. So we would hire 10 people on 8 Monday, but it seemed a little invasive to go in and 9 pull their lips up and take a picture on their first 10 day, and so we stopped doing that.</p> <p>11 Q. Yeah, I would imagine.</p> <p>12 A. That wasn't my idea. Not good bedside manner 13 on your first day to spread them open wide and start 14 taking some pictures.</p> <p>15 Q. Yeah, they have a meeting to learn how the 16 computer system works, and the next meeting is --</p> <p>17 A. Exactly.</p> <p>18 Q. -- in a dental chair having your teeth looked 19 at. That would be a little awkward for new employees.</p> <p>20 A. So we clean their teeth, and that's how we get 21 a peek inside their mouth.</p> <p>22 And really what happens is we have a lot of</p> <p style="text-align: right;">Page 33</p>

Pages 30 to 33

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 patients stopping us in the hallway begging to come in, 2 but their tooth just doesn't qualify for one of the 3 projects that we're doing?</p> <p>4 Q. I was going to say that I imagine the way that 5 you do select patients are just based on what's most 6 appropriate to show what you -- the educational purpose 7 and marketing purpose that you're serving; right?</p> <p>8 A. That's correct.</p> <p>9 So, for example, it's much easier to educate on 10 front teeth than it is on back teeth. Ironically, most 11 people only brush their front teeth and not their back 12 teeth, and so they've got big blown-out teeth, and they 13 want help in the posterior, but it's difficult to film.</p> <p>14 So we're always on the lookout for good-looking 15 men and women with really ugly crowns on their front 16 teeth. That's our dream come true.</p> <p>17 Q. And I think you mentioned a ways back something 18 called e.max.</p> <p>19 A. Uh-huh.</p> <p>20 Q. Did I hear that right?</p> <p>21 A. Yes.</p> <p>22 Q. What is e.max?</p> <p style="text-align: right;">Page 34</p>	<p>1 nearly been as strong as the PFMs; much better looking 2 but with a higher tendency for fracture.</p> <p>3 And when e.max was made available in 2007, it 4 was really the first time we had a high-strength, 5 all-ceramic crown that we could count on working in many 6 areas of the mouth.</p> <p>7 Q. And that's still a material which is popular 8 today?</p> <p>9 A. Yes.</p> <p>10 Q. And is "e.max" sometimes spelled e-dot-m-a-x?</p> <p>11 A. That's correct. All the time.</p> <p>12 Q. Do you have an understanding for why it's 13 called e-dot-m-a-x?</p> <p>14 A. Originally it was released as Empress 2. They 15 had -- Ivoclar found a lot of success with Empress. 16 They launched what they like to call the esthetic 17 revolution in about 1992, and that's why that Las Vegas 18 Institute existed, because Empress allowed us to do 19 things we could never do before.</p> <p>20 So a few years after that they released 21 Empress 2 to take advantage of that great name, the 22 Empress name, and the trust that dentists had in it.</p> <p style="text-align: right;">Page 36</p>
<p>1 A. e.max is another restorative material -- an 2 indirect restorative material, which means that -- a 3 direct restorative material would be like a composite 4 resin or a bonding where a dentist puts in your tooth, 5 shines a light at it, and it's done. And indirect 6 restorative material is one that has to be fabricated 7 for the most part by a dental laboratory.</p> <p>8 So e.max is an indirect restorative material 9 for crowns. It's lithium disilicate, and it's from 10 Ivoclar Vivadent, and it's actually called IPS e.max, 11 kind of like IPS Empress, to be official. And e.max 12 is another high-strength, cementable, all-ceramic crown, 13 and by "all-ceramic crown" I mean this is a class of 14 crown that no longer has a metal coping underneath it.</p> <p>15 So from about 1959 to 1980 all crowns were the 16 PFM crowns we referenced before with the metal coping 17 and porcelain on top of it. There's a lot of esthetic 18 compromise with this gray metal coping underneath that 19 PFM crown, so there's always been a drive in dentistry 20 to come up with tooth-colored crowns, where it's 21 tooth-colored on the outside and tooth-colored on the 22 inside with no metal. And these historically have not</p> <p style="text-align: right;">Page 35</p>	<p>1 And it was the lithium disilicate e.max material, but 2 it was overlaid with porcelain. So it was porcelain 3 fused to lithium disilicate, so a PFL, if you will. Not 4 that that term actually exists.</p> <p>5 But they had a lot of problems with the 6 porcelain falling off it, which is one of the 7 liabilities of these two-layered crowns. And so they 8 pulled it off the market about two years after that.</p> <p>9 Then they released it again as IPS Eris, 10 E-r-i-s, which was a lithium disilicate framework that 11 again had a porcelain, a different porcelain, on the 12 outside of it which they said would stick to it better, 13 and that kept coming off. So that was pulled off the 14 market about two years after it was launched.</p> <p>15 Then they came back to us a third time, and 16 they said, "We've got another lithium disilicate crown," 17 and we're like, "That's enough guys. We're still -- 18 we've got a lot of angry doctors, and we're still 19 replacing the last two that failed."</p> <p>20 We said, "What are you putting on the outside 21 this time?" and they said, "Nothing. We're making the 22 whole crown out of lithium disilicate."</p> <p style="text-align: right;">Page 37</p>

Pages 34 to 37

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 We said, "Can you do that?" and they said,</p> <p>2 "Yeah."</p> <p>3 "How does it look?" and they said, "It looks</p> <p>4 pretty darn good." And that was e.max.</p> <p>5 So it had failed twice with porcelain on the</p> <p>6 outside of it, and the third time they took that</p> <p>7 framework and just made the whole crown out of</p> <p>8 Shocking in a sense, because no one had ever seen</p> <p>9 something like that in dentistry before where you could</p> <p>10 use a framework -- it'd be like taking that silver-gray</p> <p>11 framework from the PFM and making a whole crown out of</p> <p>12 it. It would be very ugly.</p> <p>13 But e.max, that was its third incarnation,</p> <p>14 without any porcelain on the outside, which qualified it</p> <p>15 as a monolithic material because there was not -- no two</p> <p>16 layers to come apart.</p> <p>17 Q. "Monolithic" meaning one layer?</p> <p>18 A. Meaning one material essentially.</p> <p>19 Q. Right.</p> <p>20 A. So no porcelain and gold like we had before,</p> <p>21 because when you fire those in the oven and you run them</p> <p>22 up to, you know, 1,200 degrees, as they cool, they have</p> <p style="text-align: right;">Page 38</p>	<p>1 A. Right. That's the only crown in that category</p> <p>2 of lithium disilicate as of today.</p> <p>3 Q. That was released in 2007. So prior to 2007</p> <p>4 were there any monolithic crowns at all?</p> <p>5 A. Empress was technically a monolithic crown</p> <p>6 because it was pressed, leucite-reinforced ceramic, and</p> <p>7 it was all -- there was no coping or inside layer, but</p> <p>8 because of its weaker strength -- the e.max is about</p> <p>9 three times stronger than the Empress in terms of</p> <p>10 flexural strength. Because of the weaker strength, it</p> <p>11 had to be bonded into place.</p> <p>12 And so bonding is where we use a resin</p> <p>13 cement -- a composite resin cement, and we'll bond a</p> <p>14 weaker restoration to the tooth, and then it takes on</p> <p>15 the strength of the tooth. So a good example would be</p> <p>16 like a ceramic floor tile. If you take a ceramic floor</p> <p>17 tile, you could break it over your knee. But if you</p> <p>18 bond it to the subfloor, a herd of elephants can walk</p> <p>19 across it, and it won't crack.</p> <p>20 And Empress was the same way: It was very weak</p> <p>21 until it was bonded to the tooth, and then it was</p> <p>22 strong. But the bonding procedures are difficult;</p> <p style="text-align: right;">Page 40</p>
<p>1 different coefficients of thermal expansion, and it sets</p> <p>2 up thermal stresses within that system almost waiting to</p> <p>3 break.</p> <p>4 And patients will come in and say -- they'll</p> <p>5 pop porcelain off their crown, and you say, "What were</p> <p>6 you chewing?" and they say, "Nothing. A piece of bread</p> <p>7 soaked in coffee."</p> <p>8 And we just always assumed they were lying,</p> <p>9 because patients do that. And we'd say, "What were you</p> <p>10 biting on? Were you opening a beer bottle? What are</p> <p>11 you afraid to tell me?"</p> <p>12 And we know that those PFMs are prone to</p> <p>13 cracking like that, and so that's -- e.max as a</p> <p>14 monolithic material kind of took the dental world by</p> <p>15 storm when it came out in 2007, and the growth curve on</p> <p>16 that's just been phenomenal since 2007.</p> <p>17 Q. So e.max is a material that Glidewell will</p> <p>18 make crowns out of?</p> <p>19 A. Yes.</p> <p>20 Q. And I think you said before, it'll be based on</p> <p>21 a prescription from a dentist asking for that particular</p> <p>22 crown; correct?</p> <p style="text-align: right;">Page 39</p>	<p>1 they're finicky; they could lead to a lot of</p> <p>2 postoperative sensitivity on the tooth for the patient.</p> <p>3 What dentists prefer to do is just cement things into</p> <p>4 place, a much lower-tech way to attach a restoration to</p> <p>5 a tooth, but you can only do it if it's a high-strength</p> <p>6 restoration.</p> <p>7 So when we talk about e.max, we really should</p> <p>8 say it's a high-strength, all-ceramic, cementable crown,</p> <p>9 which refers to the fact that it doesn't have to be</p> <p>10 bonded into place.</p> <p>11 So Empress was a monolithic restoration, but it</p> <p>12 was not cementable. It had to be bonded into place.</p> <p>13 The very first monolithic restoration of all were cast</p> <p>14 gold crowns, you know, which were being done back in</p> <p>15 the 1940s. They were being done up until 1959. They're</p> <p>16 still done today, but it's only about 3 percent of what</p> <p>17 we do. And you've probably seen a grandparent, or</p> <p>18 somebody opens their mouth and they have a gold crown in</p> <p>19 the back.</p> <p>20 Q. Or a pirate.</p> <p>21 A. Or a pirate.</p> <p>22 It's the best material we've ever had in</p> <p style="text-align: right;">Page 41</p>

Pages 38 to 41

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 dentistry. It's a metal, so it won't break or chip.</p> <p>2 It's very kind to the opposing teeth when you chew on</p> <p>3 it, and it lasts -- it's longevity is measured in</p> <p>4 decades, not years.</p> <p>5 So monolithic restorations have been around</p> <p>6 forever. The very first indirect one that we had, cast</p> <p>7 gold, was a monolithic restoration. It wasn't until we</p> <p>8 tried to pretty things up in 1959 that we started</p> <p>9 putting two dissimilar materials together on crowns.</p> <p>10 Q. Because people didn't want to look like</p> <p>11 pirates.</p> <p>12 A. Yeah, you know, for as much talk as things</p> <p>13 about plastic surgery today in Newport Beach, apparently</p> <p>14 what they looked like bad in the Mad Men days in the</p> <p>15 early '60s as well, and they did not want gold showing</p> <p>16 on their teeth when they smiled. So, yeah, that's why</p> <p>17 the PFM was invented, but it was pretty much a</p> <p>18 compromise from the very beginning.</p> <p>19 Q. And I'm sorry. When did the PFMs start? In</p> <p>20 the '60s?</p> <p>21 A. 1959, 1960.</p> <p>22 Q. 1959.</p> <p style="text-align: right;">Page 42</p>	<p>1 crown. But if you've prepared your teeth correctly and</p> <p>2 you've got a tooth that looks not straight up and down,</p> <p>3 but just barely tapered, that crown slides into place,</p> <p>4 and there's literal mechanical retention. Sometimes</p> <p>5 hard to take the crown off even before the cement's</p> <p>6 there. So in that kind of tooth you can cement it into</p> <p>7 place, and you have nothing to worry about.</p> <p>8 Bonding is either you have a weak material,</p> <p>9 like a thin, all-ceramic material or even something like</p> <p>10 Empress, and you need to have the restoration take on</p> <p>11 some of the physical properties of the tooth below it.</p> <p>12 So it uses -- like I don't know if you've ever had a</p> <p>13 bonding done on your teeth, again that bonding material</p> <p>14 where they shape it and they shine that blue light on it</p> <p>15 and it gets hard as a rock. That's essentially what</p> <p>16 bonding is.</p> <p>17 We take a layer of resin cement inside the</p> <p>18 crown and put it on and shine a light at it, and now we</p> <p>19 have this hard, rigid cement on the inside that's going</p> <p>20 to bond to the tooth just like we did a bonding on your</p> <p>21 tooth up in the front. But it's more expensive, it's</p> <p>22 harder to do, it's hard to do well, it can lead to more</p> <p style="text-align: right;">Page 44</p>
<p>1 And so a gold crown is attached to a tooth</p> <p>2 using cement; is that correct?</p> <p>3 A. It can be bonded as well, but it certainly can</p> <p>4 be cemented, because it's strong enough.</p> <p>5 The other consideration -- you know, you have</p> <p>6 to bond, as I said, if you have a weaker restorative</p> <p>7 material. The other consideration is if you have a</p> <p>8 really short tooth. So sometimes in the back on a lower</p> <p>9 second molar you have a really short tooth that you have</p> <p>10 to put a crown on top of, and since you don't have a lot</p> <p>11 of mechanical retention -- you know, you have a lot more</p> <p>12 mechanical retention if a crown slides down a tooth</p> <p>13 surface like this versus a short one -- you may bond</p> <p>14 gold into place where you're going to have a higher</p> <p>15 requirement for the cement to help hold that on.</p> <p>16 Q. So for the layperson, nondentist, what's the</p> <p>17 difference between cementing and bonding? How would you</p> <p>18 describe it?</p> <p>19 A. Cementing is easy to do, simple, simple</p> <p>20 cleanup, very low to no postoperative sensitivity, so</p> <p>21 lots of benefits there, but a very weak bond between the</p> <p>22 cement and the tooth and maybe no bond at all to the</p> <p style="text-align: right;">Page 43</p>	<p>1 sensitivity for the patient because you have to do an</p> <p>2 acid etch on the tooth. So it's just a different degree</p> <p>3 of luting something to the tooth.</p> <p>4 So it's kind of -- you know, cementation kind</p> <p>5 of exists here, and it's how most dentists would prefer</p> <p>6 to put most crowns in, because it's very predictable and</p> <p>7 easy to clean up, and the resin cements take the degree</p> <p>8 of difficulty on the case up a lot higher. So dentists</p> <p>9 would prefer not to have to bond things into place if</p> <p>10 they didn't have to.</p> <p>11 Q. So another term you mentioned was BruxZir crown</p> <p>12 BruxZir crown.</p> <p>13 A. Uh-huh.</p> <p>14 Q. What do you mean by a BruxZir crown?</p> <p>15 I mean, you're talking now about a monolithic</p> <p>16 zirconia crown?</p> <p>17 A. Right.</p> <p>18 Q. Okay.</p> <p>19 A. Yeah, I'm talking about, yeah, a monolithic</p> <p>20 zirconia crown.</p> <p>21 Q. Now, when did those types of crowns appear?</p> <p>22 What year?</p> <p style="text-align: right;">Page 45</p>

Pages 42 to 45

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 A. I first started using them in 2007 in-house, 2 again, on employees, and it was easy to look at what 3 Ivoclar did with e.max and what a great restoration they 4 had by taking the porcelain off the top. At the time we 5 were using other zirconia-based restorations such as 6 Lava from 3M ESPE and Procera Zirconia from 7 Nobel Biocare, and these were both bilayered, 8 zirconia-based crowns. 9 So there was a zirconia coping that was white 10 and then porcelain fused to the outside of it. And as 11 you might imagine, when you put those two things 12 together, there's a chance they come apart. So 13 initially our experience with zirconia was soured a 14 little by the porcelains that were on the outside. 15 When we saw what Ivoclar did by taking the 16 porcelain off e.max and making the whole restoration 17 out of it, it occurred to us that you might be able to 18 do the same thing with these other zirconia-based crowns 19 and take the porcelain off and make the whole crown out 20 of zirconia. And that's how the BruxZir project started 21 was seeing what that would look in the patient's mouth, 22 seeing how it would act, like seeing what it was like to</p> <p style="text-align: right;">Page 46</p>	<p>1 Q. Right. Because instead of metal on the bottom, 2 you get the zirconia on the bottom. 3 A. You have the zirconia, correct. 4 Q. So just like e.max built the whole crown out of 5 the lithium disilicate, the BruxZir product that 6 Glidewell has is building the entire crown out of 7 zirconia? 8 A. Correct. 9 Q. Now, I take it you were involved in this 10 decision process to develop this product; is that 11 correct? 12 A. Well, I was certainly involved in the execution 13 of it. I remember Jim Glidewell coming up with the idea 14 one day at lunch, and -- I don't recall being asked if I 15 wanted to do it or not. 16 Q. More you were told it was being done, and you 17 were going to play the role -- 18 A. Yeah, it was more of a let's do this, and I was 19 like, "Okay. Is this going to work?" And looking 20 around the table, everybody was like, "We don't know. 21 No one's ever done it." You know, we didn't know what 22 was going to happen.</p> <p style="text-align: right;">Page 48</p>
<p>1 try to fabricate it and make it and put it into place. 2 And that was back in about 2007 probably. 3 Q. Okay. So the Lava product was -- it was 4 monolithic zirconia -- or would you call that 5 monolithic? 6 A. No, would I not call that -- 7 Q. You'd call that bilayer? 8 A. Yeah. 9 Q. Okay. And that's with porcelain on top and 10 some sort of zirconia underneath? 11 A. That's correct. 12 Q. You mentioned Procera. 13 A. Yes. 14 Q. That also describes Procera? It was a bilayer? 15 A. Correct. And there's another one, Cercon, 16 which was the very first one, C-e-r-c-o-n, which we had 17 brought to us in probably 2002 or 2003 from a company 18 called Dentsply, and that was the first porcelain fused 19 to zirconia. 20 Q. But these are not PFMs; correct? 21 A. Correct. PFZs I suppose we would call it, 22 porcelain fused to zirconia.</p> <p style="text-align: right;">Page 47</p>	<p>1 Q. So the BruxZir product that's the trademarked 2 product was first used in 2009; is that correct? 3 A. By outside dentists or by me? 4 Q. By anybody. 5 A. Including me? 6 Q. Yes -- well, let me ask you that question. Let 7 me strike that question and ask you: When were you 8 first using monolithic zirconia crowns? 9 A. 2007. 10 Q. Okay. So already back in 2007 you were doing 11 that? 12 A. Correct. 13 Q. And you were performing this service with 14 monolithic zirconia crowns on which patients? 15 A. At the time we were just using posterior teeth. 16 Q. That means teeth in the back? 17 A. Yes, I'm sorry. Yeah, molars and things like 18 that. Because this -- these early crowns were uglier 19 than anything I'd ever seen before in my life. If I 20 grew up trying to learn how -- in dentistry trying to 21 learn how to do cosmetic dentistry, this was 22 anticosmetic dentistry. This was the mother-in-law</p> <p style="text-align: right;">Page 49</p>

Pages 46 to 49

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 crown.</p> <p>2 Q. And it's because the material was chosen for</p> <p>3 its strength not its appearance; correct?</p> <p>4 A. Yes. Yes, it was chosen for its strength.</p> <p>5 There's a problem we have as dentists where</p> <p>6 we'll suggest something to a patient, typically cast</p> <p>7 gold. One of the big differences -- I mentioned earlier</p> <p>8 that PFM was a compromise from the beginning. It was a</p> <p>9 compromise in a couple of ways: It was two layers being</p> <p>10 put together on a crown, one's a metal, one's a glass.</p> <p>11 You know, they're probably not going to stick together</p> <p>12 in they get under a lot of stress.</p> <p>13 And the other compromise was you have to drill</p> <p>14 away 2 millimeters of tooth structure on the top of a</p> <p>15 tooth for a porcelain-fused-to-metal crown. That's</p> <p>16 a lot. You know, you've only got about a millimeter and</p> <p>17 a half now until you get to the nerve of the tooth.</p> <p>18 Cast gold can be as thin as 3/10 of a</p> <p>19 millimeter. So dentists were used to preparing teeth</p> <p>20 pretty conservatively, and when the PFM came out, all of</p> <p>21 a sudden it was 2 millimeters off the top. Dentists</p> <p>22 revolted and continue to revolt to this day by not</p> <p style="text-align: right;">Page 50</p>	<p>1 my own mother before my wedding. We had a two-year</p> <p>2 argument. I finally took her gold out and put it in.</p> <p>3 So initially we thought, "What are we going to</p> <p>4 do?" What do you do as a dentist when you want to do</p> <p>5 gold and you know it's the right thing to do, and a</p> <p>6 woman says -- or a man maybe, but a lot of times it was</p> <p>7 women -- says, "I'm not going to let you put gold in my</p> <p>8 mouth"?</p> <p>9 It's ironic. They have gold earrings, there's</p> <p>10 a gold necklace. I had a girl once with a gold stud in</p> <p>11 her nose. I was like, "Wait a minute. You don't want</p> <p>12 to show gold? The sun's glinting off it right now as</p> <p>13 we're talking, and where I'm talking about putting it is</p> <p>14 between a cheek and a tongue."</p> <p>15 And so it was thought that if we had a</p> <p>16 high-strength, all-ceramic, all-zirconia, monolithic</p> <p>17 material, that it might be an answer for these areas</p> <p>18 where we couldn't prepare as much as we wanted to for a</p> <p>19 PFM crown or an e.max crown. An e.max crown, it may</p> <p>20 have occurred to you, would have been good for that</p> <p>21 situation, but it needs a full millimeter of reduction</p> <p>22 on the top of the tooth. And it may be three times</p> <p style="text-align: right;">Page 52</p>
<p>1 prepping a full 2 millimeters off the top of the tooth,</p> <p>2 and as a result, the PFMs are compromised; they're too</p> <p>3 thin, and they're subject to breakage.</p> <p>4 So, as I mentioned earlier, the cast gold crown</p> <p>5 stands as the -- literally, the gold standard for</p> <p>6 restorative dentistry. So you'll see a patient whose</p> <p>7 got a tooth that's only sticking maybe 3 millimeters out</p> <p>8 of the gum tissue versus the traditional 10 millimeters,</p> <p>9 and it's a short what we call clinical crown. There's</p> <p>10 not much tooth sticking out of the gums, and we can't</p> <p>11 take much -- if we took 2 millimeters off, we would be</p> <p>12 leveling the tooth with the gum tissue, amputating it</p> <p>13 essentially.</p> <p>14 So this is a tooth that would really benefit</p> <p>15 from a cast gold restoration, where we'd only reduce</p> <p>16 3/10 of a millimeter from the top of it. But you find</p> <p>17 that many patients aren't willing to have gold in their</p> <p>18 mouth, and you can't force it on them.</p> <p>19 My dad was a dentist. He forced gold on a lot</p> <p>20 of people. In my first two years in practice I spent</p> <p>21 a lot of time replacing it on women who said, "I can't</p> <p>22 believe your dad put this in my mouth." One of them was</p> <p style="text-align: right;">Page 51</p>	<p>1 stronger as Empress, but as it turns out, the</p> <p>2 full-contour zirconias are three times stronger than the</p> <p>3 e.max as well.</p> <p>4 And as it turns out, the cast gold's even</p> <p>5 stronger than all of them. It still kind of rules the</p> <p>6 roost. It's first in strength and last in esthetics, a</p> <p>7 tough tradeoff.</p> <p>8 So most of the cases that we did initially were</p> <p>9 back teeth.</p> <p>10 Q. So the cases that you were doing, I guess you</p> <p>11 would -- were these being filmed and shown to people at</p> <p>12 all, or was this being done for R&D purposes within</p> <p>13 Glidewell?</p> <p>14 A. This was just being done for R&D purposes. And</p> <p>15 typically what we would do is prep a crown on somebody,</p> <p>16 and we let a couple different departments make the</p> <p>17 crowns. Everybody kind of got to have this technology</p> <p>18 and work with it. They really were so ugly in the</p> <p>19 beginning that we thought it would speed everything up</p> <p>20 if different departments were able to approach the</p> <p>21 shading issues of this material with their own unique</p> <p>22 approaches.</p> <p style="text-align: right;">Page 53</p>

Pages 50 to 53

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 And so I would prepare a patient for a crown, 2 the patient would come back in a week, and seven 3 department managers would show up with two crowns each. 4 And this patient would lay there with retractors in 5 their mouth, and we would try in 14 crowns, on camera, 6 so that everybody could look at a plasma screen up on 7 the wall. 8 And I wouldn't tell anybody whose crowns were 9 whose, and everybody in the room would vote on which one 10 we liked the best, and then whoever won would share what 11 they did on that crown. And then -- and it would 12 continue like that, just trying to the coloration of 13 those materials to look a little bit better. 14 So we didn't film any of it for distribution to 15 the dentists. It was all R&D stuff in-house to try to 16 figure out how to make this material look a little 17 better. 18 Q. And the patients are, again, Glidewell 19 employees; is that correct? 20 A. Correct. 21 Q. So you're talking about the appearance and 22 trying to get the shading right. What was your sense of</p> <p style="text-align: right;">Page 54</p>	<p>1 Germany, in Regensburg, I think that University, that 2 were being done as well. 3 And, consequently, now there's lots of studies 4 done and research that's being done by -- I don't know 5 if you know who Gordon and Rella Christensen are. They 6 run the Clinicians Report, a nonprofit research group 7 for dentistry where they do a lot of clinical testing on 8 materials and work with 30 to 40 dentists out in the 9 United States who place different crowns in the mouth 10 and take impressions of the crowns and send it back to 11 Utah, where they pour it up and gold-plate it, then look 12 at it with an SEM. 13 So they've started doing clinical testing on 14 these materials -- on the monolithics, on e.max and 15 BruxZir. 16 Q. These studies you're talking about, these are 17 not specifically on Glidewell zirconia. It's just on 18 monolithic zirconia crowns that may or may not be from 19 Glidewell; is that correct? 20 A. I believe we provided the crowns for those 21 studies, but I could be wrong. 22 Q. Who would know? Who within Glidewell?</p> <p style="text-align: right;">Page 56</p>
<p>1 these monolithic zirconia crowns from a performance 2 perspective, aside from appearance? 3 A. I had no idea how they were going to perform 4 clinically. I just knew when we broke he them 5 downstairs on the Instron machine out of the mouth, it 6 was the highest numbers that we were seeing for any 7 crown. But we really didn't know what was going to 8 happen when we put it in the mouth, in terms of the 9 esthetics as well. 10 So we started seeing some of the wear studies 11 that were coming back, and they looked very promising. 12 It was going to wear the opposing teeth at about the 13 same rate as e.max. But, you know, in the beginning we 14 were just -- we knew a couple people in Europe who we'd 15 heard of who were doing full-contour zirconia crowns, 16 and we had some conversations with them, and it sounded 17 like it was working well. 18 Q. Did Glidewell do its own internal studies on 19 wear or durability performance? 20 A. We have a chew simulator in R&D, and I believe 21 they did some studies, but there was also university 22 studies that were done, one in Alabama and one in</p> <p style="text-align: right;">Page 55</p>	<p>1 A. Jim Shuck. 2 Q. And what about Mr. Carden? Would he know? 3 A. I don't remember when he started. This might 4 predate him, but he may know, yes. 5 Q. Now, these studies, don't they take time to -- 6 for example, wear studies, doesn't it take years to get 7 results on those things? 8 A. The in vivo ones do, but the in vitro ones, 9 where they do it on a chew simulator, can go through 10 millions of chewing cycles and thermocycling relatively 11 quickly, in a matter of a month and a half, I think. 12 Q. And the monolithic zirconia crowns went through 13 both types of investigation? 14 A. They certainly went through -- those studies 15 that I mentioned before were in vitro studies, and the 16 only one I'm familiar with now is the Clinicians Report 17 study that Gordon and Rella Christensen are doing that's 18 an in vivo one where they had dentists place these 19 high-strength, all-ceramic, monolithic crowns, and then 20 they're looking at those. 21 Q. So the early studies you talked about were 22 in vitro studies?</p> <p style="text-align: right;">Page 57</p>

Pages 54 to 57

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 A. As far as I know, yes.</p> <p>2 Q. So those are chew simulators; correct?</p> <p>3 A. Yes.</p> <p>4 Q. And now you're saying -- the most recent study</p> <p>5 you're referring to, this was one done in Utah; correct?</p> <p>6 A. Well, that's where it's being administered, but</p> <p>7 the dentists are all over the country who are</p> <p>8 participating in it.</p> <p>9 Q. Okay. Administered out of Utah, using dentists</p> <p>10 around the country, and that's an in vivo investigation?</p> <p>11 A. Correct.</p> <p>12 Q. And the results of the tests out of Utah has</p> <p>13 already been released?</p> <p>14 A. We saw Rella Christensen give a presentation in</p> <p>15 August in Las Vegas at a meeting called CEREC 27.5 where</p> <p>16 she showed e.max crowns and BruxZir crowns and the</p> <p>17 wear that they caused on opposing teeth and how opposing</p> <p>18 teeth were also wearing the e.max and the BruxZir</p> <p>19 restorations.</p> <p>20 So there was wear taking place on both</p> <p>21 surfaces, which was good news for us to be able to see</p> <p>22 that -- everything wears against each other. Two</p> <p style="text-align: right;">Page 58</p>	<p>1 the final test," and I like that. You know, that's</p> <p>2 different than the in vitro chewing machine stuff. I</p> <p>3 like to see when it's actually in the human mouth and</p> <p>4 what's going on.</p> <p>5 BY MR. JANKOWSKI:</p> <p>6 Q. Because the environment's different?</p> <p>7 A. Yeah. It's a simulator still. I mean, it's</p> <p>8 really hard -- the human skull and the way people chew</p> <p>9 and the acidity or saliva and all that -- it's difficult</p> <p>10 to replicate.</p> <p>11 So you get a good idea if a proposed material</p> <p>12 is going to just chew up natural teeth putting it in a</p> <p>13 chew simulator against, you know, enamel, but you get a</p> <p>14 much better idea of what's going to happen when you do</p> <p>15 it in vivo.</p> <p>16 Q. So you were putting these monolithic zirconia</p> <p>17 crowns in patients' teeth starting in 2007; correct?</p> <p>18 A. Correct.</p> <p>19 Q. Were you doing that continuously in 2008</p> <p>20 and 2009?</p> <p>21 A. Yes.</p> <p>22 Q. And you were putting in, what, the different</p> <p style="text-align: right;">Page 60</p>
<p>1 natural enamel teeth wear against each other, and</p> <p>2 they'll wear at, you know, 10 to 15 microns a year. And</p> <p>3 when you take restorative material such as cast gold and</p> <p>4 oppose that to a natural tooth, it actually wears the</p> <p>5 gold away. The gold's so soft that the gold won't take</p> <p>6 any -- a very negligible amount of tooth away.</p> <p>7 So we're always looking for something that</p> <p>8 wears about the same rate as enamel, and e.max and</p> <p>9 BruxZir are very close and just slightly higher. But</p> <p>10 she showed examples of enamel, porcelain and even</p> <p>11 composite resin wearing the e.max and the BruxZir crowns</p> <p>12 as well. And I believe their newsletters -- they've got</p> <p>13 some of those SEMs in one of their latest newsletters,</p> <p>14 their CR report. I don't know if you've seen those or</p> <p>15 if we sent those over.</p> <p>16 MR. TACHNER: Yes.</p> <p>17 THE WITNESS: Have we? Okay.</p> <p>18 And they're such a big -- they're so well</p> <p>19 recognized in dentistry that that's the type of research</p> <p>20 that I tend to share with dentists, because you can see</p> <p>21 it, you can feel it, you can see the SEMs, you can see</p> <p>22 what's going on. Their motto is, "Clinical success is</p> <p style="text-align: right;">Page 59</p>	<p>1 batches of what the material was based on Glidewell was</p> <p>2 updating what the zirconia had in it? Is that fair?</p> <p>3 A. More -- I think more of the issue was the</p> <p>4 coloring technique of the zirconia. I don't think the</p> <p>5 material was changing so much as what we were doing to</p> <p>6 the outside of it to make it look like a tooth.</p> <p>7 Zirconia has a tendency to look very white,</p> <p>8 like this piece of paper, and even if the beginning when</p> <p>9 we would color it, before it got more translucent, it</p> <p>10 had a real tendency to reflect light, you know, when you</p> <p>11 would take a picture of it. So we would have to try to</p> <p>12 color and stain the outside of it to try to tone that</p> <p>13 down a little bit and make it look more like a tooth.</p> <p>14 So that's what the majority of what we did in</p> <p>15 the operatory was about those first two years was trying</p> <p>16 to get something that we thought a patient would be okay</p> <p>17 with.</p> <p>18 Q. How is that coloring accomplished?</p> <p>19 A. With the soaking of the zirconia crowns in</p> <p>20 different coloring solutions where it infiltrates the</p> <p>21 zirconia material.</p> <p>22 Q. So it's immersed in a liquid?</p> <p style="text-align: right;">Page 61</p>

Pages 58 to 61

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 A. Yes.</p> <p>2 Q. This is something that would be done by the</p> <p>3 dental laboratory?</p> <p>4 A. Yes.</p> <p>5 Q. When did Glidewell start going from the R&D</p> <p>6 phase to actually promoting its product commercially?</p> <p>7 A. It was 2009, maybe April. I don't remember the</p> <p>8 exact launch date, but it was sometime in 2009.</p> <p>9 Q. And I imagine there was a big marketing effort</p> <p>10 associated with the release of that product; is that</p> <p>11 true?</p> <p>12 A. I don't recall how big it was. At the time we</p> <p>13 had kind of low expectations about this material. It</p> <p>14 still was -- it was acceptable in an esthetic sense, but</p> <p>15 it still snapped your head back a little bit when you</p> <p>16 saw it because it didn't really look like a human tooth.</p> <p>17 Initially, we just thought it was going to be a very</p> <p>18 niche product for use on molars for the most part in the</p> <p>19 very back of the mouth, where the patient who didn't</p> <p>20 want to have gold showing, you could say, "Well, here's</p> <p>21 this whitish one that we could put in there."</p> <p>22 And that was my experience was many patients,</p> <p style="text-align: right;">Page 62</p>	<p>1 product.</p> <p>2 Q. And did you start doing public videos like we</p> <p>3 talked about before where you were filming -- you know,</p> <p>4 being filmed putting the BruxZir crown inside a patient,</p> <p>5 for example?</p> <p>6 A. I don't recall when the first one of those was,</p> <p>7 but it probably would have been within the first couple</p> <p>8 months of when it was launched. Yeah, I don't remember</p> <p>9 exactly when it was. I doubt it would have been before</p> <p>10 the product was launched, so it probably would have been</p> <p>11 a couple months afterwards, but I don't remember the</p> <p>12 exact date. But that would be a typical scenario for us</p> <p>13 would be to do something like that.</p> <p>14 Q. Probably in the calendar year 2009?</p> <p>15 A. I would assume so, yeah. If it was released in</p> <p>16 April, it doesn't take that long to turn a video around.</p> <p>17 We can have it done in two months.</p> <p>18 Q. And you have videos that you make that are</p> <p>19 available on Glidewell's website; correct?</p> <p>20 A. Correct.</p> <p>21 Q. And that kind of serves the same purpose;</p> <p>22 right?</p> <p style="text-align: right;">Page 64</p>
<p>1 when you showed them the gold one, they said no, and you</p> <p>2 showed them this ugly one, but it was still a shade of</p> <p>3 white, would say, "I want that one."</p> <p>4 And you'd say, "But it doesn't really look like</p> <p>5 a tooth," and they'd go, "Well, you think that gold one</p> <p>6 looks like a tooth? That looks nothing like a tooth.</p> <p>7 That looks like a brass fixture."</p> <p>8 So it seemed like it was just going to be a</p> <p>9 niche product, and -- so I don't recall being a ton of</p> <p>10 fanfare, although we -- when we advertise almost</p> <p>11 anything, there's a fair amount of effort between it.</p> <p>12 Whether it's a new snoring appliance or whatever, we</p> <p>13 don't do it quietly. There's going to be ads in dental</p> <p>14 journals and things like that.</p> <p>15 Q. What was your role in that marketing effort?</p> <p>16 A. Mainly being asked, "Why would a dentist want</p> <p>17 this?" or "What would make a dentist want to purchase</p> <p>18 this?" So it was trying to -- as the only -- well, I</p> <p>19 used to be the only dentist over there. Now there's</p> <p>20 another couple. But they would always want me to think</p> <p>21 for every dentist in America and say what -- you know,</p> <p>22 what would appeal to me if I was considering this</p> <p style="text-align: right;">Page 63</p>	<p>1 It's just you talking to dentists about the</p> <p>2 products and services that Glidewell offers; is that</p> <p>3 fair?</p> <p>4 A. It's the products and services that -- yes,</p> <p>5 that we offer as a laboratory, but it's also trying to</p> <p>6 get them to do things a little bit better: to prep the</p> <p>7 teeth a little better, take a little better impression,</p> <p>8 take a little better shade or give us a little better</p> <p>9 description of what it looks like. Hopefully, they're</p> <p>10 learning something as well.</p> <p>11 After being in private practice for 13 years</p> <p>12 and then coming into this setting, I realized when I</p> <p>13 slowed down and paid attention to what I was doing, that</p> <p>14 I learned some things that would make it easier for me</p> <p>15 to accomplish dentistry. And when you're running around</p> <p>16 in a busy private practice from room to room to room,</p> <p>17 you never have time to stop and think. So I try pass</p> <p>18 those things on too.</p> <p>19 If it was simply about, yeah, products and</p> <p>20 services, I'm not sure that we would qualify to be able</p> <p>21 to give continuing education credits through the Academy</p> <p>22 of General Dentistry like we do. So there's got to be</p> <p style="text-align: right;">Page 65</p>

Pages 62 to 65

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 some clinical stuff in there as well and not just a
2 promo piece for the product.
3 Q. Sure.
4 And some of the videos that were on the
5 website, I assume, were devoted to the BruxZir crown
6 product; is that fair?
7 A. Correct.
8 Q. And would that have started appearing as well,
9 you think, calendar year 2009?
10 A. I do think so, but I don't remember exact dates
11 for that.
12 Q. And you mentioned -- you characterized it that
13 you were thinking that this product would be a niche
14 product; correct?
15 A. Correct.
16 Q. I mean, one niche is for people who grind their
17 teeth; is that accurate?
18 A. Yeah, for people who grind their teeth, they're
19 the ones who traditionally we had to gently force
20 cast gold onto and deliver the bad news that the only
21 thing that can probably stand up to what you do with
22 your teeth in this area is with the cast gold.

Page 66

1 So, yeah, we saw this as an opportunity to
2 maybe be able to give those patients something besides
3 that shiny gold thing in the back of their mouth as a
4 replacement for the gold crown.
5 Q. Because some of these patients would have been
6 people who had previous, say, PFMs that had failed
7 because they were grinding their teeth so hard; is that
8 fair?
9 A. That is fair, and that is something that you
10 see. Certainly when we talk about the PFM failures,
11 sometimes -- it could be on a front tooth, but certainly
12 sometimes it's on a back tooth as well. And you'll see
13 a fracture on that crown and think, "I need to go with
14 something stronger next time if I want it to survive."
15 Q. And then having the monolithic zirconia is a
16 nice solution for those patients because it is much
17 stronger than the PFM; right?
18 A. Correct. And maybe even the monolithic e.max
19 as well. You know, both those monolithic products have
20 really changed the way dentists are doing dentistry
21 these days. The porcelain-fused-to-metal crown, which
22 in 2007 made up 65 percent of our business is now down

Page 67

1 to under 20 percent. So...
2 Q. So for a patient who grinds their teeth, what
3 is it that dentists should be looking at to decide
4 whether the IPS e.max or a monolithic zirconia crown
5 might be better for that patient?
6 A. That's just personal judgment and comfort level
7 on the part of the average dentist. It's really
8 difficult to know for sure what's going to work or
9 what's not going to work in somebody's mouth, and you'll
10 find dentists who put e.max everywhere, including on
11 lower first and second molars, and then you'll find ones
12 who only place it in the front of the mouth and probably
13 everything in between. That's a judgment call. That's
14 the art part of dentistry.
15 Q. What do you see as the advantages of monolithic
16 zirconia crown compared to the IPS e.max crown?
17 A. Higher flexural strength, and it can be milled
18 at a thinner dimension. So in a sense it's a more
19 conservative crown; you have to grind less tooth away on
20 the patient.
21 Q. And what are the disadvantages of the
22 monolithic zirconia crown compared to the IPS e.max

Page 68

1 crown?
2 A. Esthetics. It doesn't look as good. And when
3 the full-contour zirconia crown is tried in the mouth,
4 it gets contaminated by saliva, which is the first time
5 we've ever had that happen in dentistry before. You
6 know, in dentistry for decades we'd try a crown in the
7 mouth, we'd take it out, we'd just rinse it out with
8 water, you know, clean it out, and cement it into place,
9 and that doesn't work with zirconia-based crowns.
10 The only thing that bonds to zirconia are
11 phosphate groups, and you find a lot of them in saliva,
12 in the phospholipids in saliva. So these full-contour
13 zirconia crowns are the first one that when you try it
14 in the mouth -- and there's saliva everywhere in the
15 mouth, and typically on the tooth -- you've now
16 contaminated that surface. But dentists didn't realize
17 it for a long time, and we didn't realize it until the
18 research came out.
19 And so it's -- you have to go through some
20 steps to decontaminate it before you put it back in the
21 mouth. So it's got a more -- a slightly more difficult
22 cementation or bonding procedure than the e.max crown

Page 69

Pages 66 to 69

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 has too. So that would be another, I would say,
2 disadvantage.
3 Q. So do you have videos available on the
4 Glidewell website showing how to do the steps for a
5 monolithic zirconia crown that dentists would have to
6 perform, including the steps you're talking about here?
7 A. Yes.
8 Q. How about -- do you make videos as well as for
9 how to use the IPS e.max crown?
10 A. Yes.
11 Q. How about PFM crowns?
12 A. Yes. Although we haven't made one of those for
13 about 10 years. Not a lot of interest out there right
14 now, and there's no new story to tell, really.
15 So, yeah, we did most of our e.max videos
16 probably 2007/2008, and then probably switched to
17 BruxZir for a 2009/2010 kind of thing.
18 MR. JANKOWSKI: Okay. This is probably a good
19 time for a breaking point.
20 THE WITNESS: Sure.
21 MR. TACHNER: Sounds good.
22 THE VIDEOGRAPHER: Off the record at 10:51 a.m.
Page 70

1 (Recess taken.)
2 THE VIDEOGRAPHER: Back on the record at
3 11:08 a.m.
4 BY MR. JANKOWSKI:
5 Q. Now, Dr. DiTolla, you understand you're still
6 under oath?
7 A. Yes.
8 Q. I'd like to change gears a little bit and let's
9 talk now about the brand name that Glidewell has in its
10 monolithic zirconia crown product, BruxZir, by which I
11 mean B-r-u-x-Z-i-r.
12 A. Okay.
13 Q. What was your role or participation in the
14 development of the brand name BruxZir?
15 A. It was laughing at and mocking most of the
16 suggestions that were coming in. They for some reason
17 opened it up to everybody in the company, or at least
18 the R&D department and some other people, to come up
19 with some titles, and they were pretty bad, and I wasn't
20 sure why we were doing that.
21 And we were just kind of talking back and
22 forth, and I was out at a lecture, giving a lecture to
Page 71

1 some dentists on e.max, another monolithic, and I got a
2 message from Jim Shuck saying, "What do you think about
3 the name BruxZir?" as you spelled it.
4 I wrote back at the lunch break, and I said, "I
5 love it," and I told him how -- I got the message at the
6 first break, and then I actually ran this name by this
7 group of 75 or 80 dentists who were sitting there and
8 asked if that would be a name that would be memorable to
9 them, and a bunch of hands went up. And I said, "Well,
10 I just did my focus group of 75, and they like it, and I
11 like it," and I wrote him an e-mail about why I thought
12 it was such a good name.
13 So I had nothing to do with coming up with it,
14 but I gave it an unconditional endorsement when I heard
15 it, and it sure sounded to me like -- I think my e-mail
16 to him said it was clever, catchy and memorable.
17 Q. Okay. So you were saying it was clever, catchy
18 and memorable. What about it do you think is clever?
19 A. Finding a way to get part of the name of the
20 material into it. Dentists have a bad habit -- like if
21 we called 100 dentists right now and said, "Have you
22 heard of e.max?" 97 would say yes. If we said, "What
Page 72

1 is it made of?" 3 would see lithium disilicate. There's
2 probably more attorneys than dentists in Orange County
3 who know that, which is sad.
4 But you don't have to be smart to be a dentist.
5 You just have to be good with your hands. It's
6 helpful, though, if you know what the material is,
7 because then you can kind of compare apples and owners
8 and not just brand names. So I liked it, thought it was
9 clever because of the "Zir" for "zirconia"; that the
10 dentist was going to know what was in there.
11 Kind of like your question about why was it
12 called e.max. I don't know. I don't think it's a
13 great name. I mean, it's got "max" in it. I guess
14 that's okay and somewhat memorable, but I liked that
15 this gave an indication as to what it was made of in the
16 name.
17 Q. And, in fact, zirconia could be a good thing to
18 have in there because it's associated with a strong
19 material; is that accurate?
20 A. Well, keep in mind that before the release of
21 this, the three zirconia-based restorative systems that
22 I mentioned, the Cercon, the Procera Zirconia and the
Page 73

Pages 70 to 73

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 Lava, were all known for chipping, and a lot of people 2 who were talking about zirconia were trying to talk 3 about strength by talking about how it had been used in 4 hip replacements, you know, in ball-and-joint sockets 5 and things like that. 6 So I had seen a lot of the same chipping on my 7 Lava restorations. Now, I understood it was the 8 porcelain chipping from the outside and not the zirconia 9 chipping, but I think most dentists did not necessarily 10 think of zirconia being all that strong, even though in 11 reality it was the veneering ceramic that was breaking 12 off of there. 13 So since there were no full-contour zirconia 14 materials before this, I don't know if dentists -- if 15 there was a perception that dentists thought would be 16 strong. I know we did from the testing we did on the 17 Instron machine, but I don't know that at that point 18 there was a general feeling in dentistry that zirconia 19 was strong. 20 Q. It certainly has become a marketing point to 21 make though; correct? 22 In other words, Glidewell absolutely wants</p> <p style="text-align: right;">Page 74</p>	<p>1 A. I don't recall contributing any, but I do 2 remember having something to do with its initial motto? 3 Q. What do you mean by "its initial motto"? 4 A. Well, at the top of the advertisements it said 5 "More Brawn than Beauty." 6 Q. Yes, I've noticed that. So that came from you? 7 A. In spirit. Jim Shuck is really good with 8 words, and he probably -- I remember standing together 9 at a computer in the marketing department playing with 10 it, but it was probably more him than me. 11 I just knew that, for once, I didn't want to do 12 what most companies do, and that is, try to convince 13 dentists that this was the most beautiful crown in the 14 world, because it wasn't. It was -- it was far from it 15 at the time, and I thought being honest about that would 16 be refreshing in the advertising world, or at least the 17 dental advertising world. 18 Q. And as you said earlier, also, it certainly was 19 a niche product as well; correct? 20 A. That was our -- certainly our expectation for 21 it -- 22 Q. So, in other words --</p> <p style="text-align: right;">Page 76</p>
<p>1 people to know zirconia is strong; correct? 2 A. Correct. 3 Q. And the fact that you now have this monolithic 4 crown all made of zirconia is a good strong crown, and 5 that's a selling point; right? 6 A. Correct. 7 Q. So you say you received the name in an e-mail 8 from Jim Shuck. Do you know who came up with the name? 9 A. Yeah, I'm reasonably sure it was him. 10 Q. Oh, so you think it was Jim Shuck himself? 11 A. Oh, yeah. Yeah, I definitely think so. 12 Q. And why do you think that? 13 A. Because he's better at that than anybody in our 14 company, and the e-mail came from him, and I seem to 15 recall -- yeah, I don't know who else would have been 16 involved. 17 It may have even been a Saturday lecture. The 18 e-mail may have even been from his house. I don't 19 recall, but it was clear that it came from him. I had 20 seen the list of the other names that were floating 21 around prior to that. 22 Q. Did you contribute any names to the list?</p> <p style="text-align: right;">Page 75</p>	<p>1 A. -- as -- 2 Q. I'm sorry. Go ahead. 3 A. Well, it was just that, "Hey, we got this 4 little strong, ugly crown here." In fact, when we first 5 got ready to launch it, we sent it out for free to 6 dentists who had asked for a cast gold crown. We'd say, 7 "Do us a favor. Just try them both in, and see what you 8 and the patient think. We don't care which one you put 9 in. Your call. Just let us know which one you put in." 10 Without exception, the patients preferred the 11 look of the ugly BruxZir crown to a chunk of shiny gold, 12 but about half the dentists said, "Let's still go with 13 the gold. It's been around for 50 years. We know it 14 works." But initially that's the niche that we thought. 15 Or there's another time where a dentist asks 16 for a porcelain-fused-to-metal crown, and if they don't 17 reduce enough, that full 2 millimeters as we talked 18 about -- if they only reduce a millimeter, you can still 19 make a porcelain-fused-to-metal crown, but now the top 20 chewing surface has to be metal, because the porcelain 21 would be too thin. It would crack when you chewed on 22 it.</p> <p style="text-align: right;">Page 77</p>

Pages 74 to 77

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 So now it's metal on the top and it's porcelain</p> <p>2 on the outside, so if you pull your cheek back, it still</p> <p>3 looks somewhat like a tooth. And in those cases</p> <p>4 patients will get upset too where you tell them you're</p> <p>5 going to do a porcelain crown, which is really a PFM,</p> <p>6 and then they get it back and the whole top of it's</p> <p>7 silver.</p> <p>8 Those were really what we thought would be the</p> <p>9 two initial indications: for PFM crowns where you had</p> <p>10 to do a metal occlusal due to lack of reduction and for</p> <p>11 cast gold when the patient said no. And the early</p> <p>12 marketing reflects that, that that's what we thought it</p> <p>13 was going to be. There's a picture of it, and it shows</p> <p>14 the BruxZir crown, a PFM with a metal occlusal, and a</p> <p>15 cast gold crown.</p> <p>16 Q. Do you recall any of the other names on the</p> <p>17 list that was floating around, the candidates that</p> <p>18 didn't make it?</p> <p>19 A. I remember Atlas and -- all I remember was when</p> <p>20 I got back from that lecture trip, that one further</p> <p>21 e-mail had gone out, and somebody had just taken the</p> <p>22 name BruxZir and turned it backwards to make Rizxurb.</p> <p style="text-align: right;">Page 78</p>	<p>1 Q. And why do you say having "Brux" makes it</p> <p>2 memorable?</p> <p>3 A. It's the sound of those two together. The</p> <p>4 BruxZir, it's just -- it's memorable. I don't know.</p> <p>5 It's just something that, especially when you see it in</p> <p>6 print and you see the Z-i-r, I just think it leaves an</p> <p>7 imprint. I think it's easier to remember than e.max</p> <p>8 or Empress, for example, which just are kind of words</p> <p>9 that seem randomly chosen almost.</p> <p>10 Q. And by contrast, "Brux" is not randomly chosen.</p> <p>11 A. No, "Brux" and "Zir" were not randomly chosen.</p> <p>12 Q. So what's your understanding for why "Brux" is</p> <p>13 not randomly chosen in this name?</p> <p>14 A. Well, because one of the possible -- for a long</p> <p>15 time, as I said before, when you had somebody who showed</p> <p>16 signs of wear or, like you even said, when they break</p> <p>17 off a PFM crown before, those were the times where we</p> <p>18 really had to give the patient the bad news that, "This</p> <p>19 is going to be a gold crown. That's really all we can</p> <p>20 do here. You're going to break anything else that we</p> <p>21 put in here. You already broke that one in front of it</p> <p>22 in that one particular case."</p> <p style="text-align: right;">Page 80</p>
<p>1 And I'm not even sure what that -- he no longer works</p> <p>2 with us. That's not why, but that one for some reason</p> <p>3 stuck in my mind because it was so out there.</p> <p>4 Q. How was that spelled, I can't picture it.</p> <p>5 A. It was BruxZir backwards, so it was</p> <p>6 R-i-z-x-r-u-b. It appears to be a Czechoslovakian</p> <p>7 surname. But there were lots of other ones that weren't</p> <p>8 very memorable.</p> <p>9 Q. How about Zirbrux, Z-i-r-b-r-u-x?</p> <p>10 A. I don't recall that one. That one seems</p> <p>11 like -- like I said, I kind of had a lot of disdain for</p> <p>12 most of the ones I heard except for that one. I don't</p> <p>13 recall hearing that one.</p> <p>14 Q. Who ultimately made the decision to use</p> <p>15 "BruxZir" the way its currently spelled?</p> <p>16 A. I believe Jim Shuck did. He sits in a room</p> <p>17 with Jim Glidewell, but I don't think he needs to turn</p> <p>18 to Jim Glidewell and ask, "Is it okay if we do this?"</p> <p>19 Q. So you said that you thought the name was</p> <p>20 clever because of the "Zir." How about the "Brux" part?</p> <p>21 A. That would probably be more of the memorable</p> <p>22 part, I think.</p> <p style="text-align: right;">Page 79</p>	<p>1 So one of the possible indications for it was</p> <p>2 in somebody who had broken other restorations before.</p> <p>3 This would be a tooth-colored restoration that you could</p> <p>4 use in there instead of the gold restoration that you</p> <p>5 really wanted to do.</p> <p>6 Q. And bruxer is a name dentists us for patients</p> <p>7 who grind their teeth; correct?</p> <p>8 A. Spell it.</p> <p>9 Q. B-r-u-x-e-r?</p> <p>10 A. Yes.</p> <p>11 Q. And that when you see the "Brux," B-r-u-x, in</p> <p>12 the brand name B-r-u-x-Z-i-r as a dentist, it's going to</p> <p>13 make you think of somebody who grinds their teeth; is</p> <p>14 that fair?</p> <p>15 A. I don't know. I don't know if that's what it's</p> <p>16 evocative of to me. Bruxism is a destructive process</p> <p>17 where there's a loss of tooth as someone's bruxing. It</p> <p>18 doesn't necessarily say strength to me. It has more</p> <p>19 destructive connotations to me.</p> <p>20 Q. But isn't the connotation as a reference to an</p> <p>21 application of the crown; in other words, here's a crown</p> <p>22 to consider when somebody has bruxism, somebody is a</p> <p style="text-align: right;">Page 81</p>

Pages 78 to 81

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 bruxer, b-r-u-x-e-r?

2 A. Yeah, it is a crown to consider if somebody

3 shows seen of bruxism.

4 Q. And when you saw Jim Shuck's e-mail and you saw

5 BruxZir with the B-r-u-x at the beginning, in your mind

6 it made you think of bruxism or bruxers, meaning people

7 who suffer from bruxism; correct?

8 A. That's hard to say, because I had two years of

9 experience with the product at that point, and we were

10 not using it strictly in patients who were bruxers. It

11 was becoming, for me, my default crown in the posterior

12 just because of how strong I knew it was, and as it

13 turns out, that's what happened with the average dentist

14 as well. We underestimated how important strength was

15 to them.

16 Q. But I guess my question is, when you see "Brux"

17 there, you don't see it as just, you know, a fanciful or

18 made-up word. "Brux" is a dental term of art; correct?

19 A. Yes.

20 Q. And when you saw Jim Shuck's e-mail, you would

21 have recognized it as a dental term of art, and that was

22 part of it being clever as well, don't you think?

Page 82

1 A. I think the clever part was the Z-i-r. If he

2 would have sent me B-r-u-x-x-e-r, for example, that

3 doesn't strike me as clever necessarily.

4 Maybe it's because I'm an educator, but I

5 appreciated the fact that the name let the dentist know

6 what the material was made of almost more than anything

7 else. Because we've moved far beyond --

8 THE WITNESS: We're allowed to talk numbers;

9 right? Everybody knows the numbers of how many crowns

10 we're doing?

11 MR. TACHNER: Yes.

12 THE WITNESS: I mean, 60,000 BruxZir crowns a

13 month. We've moved way beyond using it for bruxers, you

14 know, for people who brux. There's -- it makes up

15 15 percent of the crowns we do in the front now, which

16 is crazy, and I'm not even sure well advised on the part

17 of the dentists actually.

18 But I -- the thing to me that I really liked

19 was that dentists were going to know what was in this

20 product and be able to compare it to the other

21 generations of crowns like it that would come and be

22 able to tell the difference BruxZir with zirconia and

Page 83

1 e.max or e.lith if they would have done something to

2 teach them that it was lithium disilicate inside of

3 there.

4 BY MR. JANKOWSKI:

5 Q. But going again back in time to -- first of

6 all, when would this e-mail have been sent by Jim Shuck?

7 That would have been in 2009 calendar year?

8 THE WITNESS: Do you have it, Leonard, or is it

9 not --

10 MR. TACHNER: I don't have it with me. I think

11 it's been served.

12 MR. JANKOWSKI: I haven't seen it.

13 MR. MANGUM: I haven't seen it.

14 THE WITNESS: I thought it was. Should I look

15 at the date? I think it's on my phone. Or...

16 MR. TACHNER: If you want, sure.

17 THE WITNESS: June 6, 2009 -- June 5, 2009.

18 BY MR. JANKOWSKI:

19 Q. June 5, 2009?

20 And that was an e-mail from Jim Shuck to you;

21 correct?

22 A. Actually, what I have is the one from me back

Page 84

1 to him on June 5?

2 Q. You don't have the e-mail from him to you?

3 Does it show it below your e-mail?

4 A. No, it doesn't. And maybe -- you know,

5 honestly, maybe he texted me and then I e-mailed back.

6 I don't recall exactly how it happened. But I'm

7 commenting back to him on June 5, 2009, about the name,

8 but the e-mail below it is an unrelated thing from him

9 about -- that doesn't mention the name.

10 Q. And what was your message?

11 A. Read the e-mail?

12 Q. Sure.

13 A. Is that what you're asking?

14 Q. Sure, please. Thank you.

15 A. "I like BruxZir for a couple of reasons. It's

16 catchy, clever and memorable. It won't make or break

17 the product by any stretch, but it makes it easier for

18 dentists to ask their friends if they have heard of it.

19 "It also describes an indication as we see it

20 today: an unbreakable crown for patients who have

21 broken or might break other restorations. When you want

22 gold and the patient wants white, BruxZir will make both

Page 85

Pages 82 to 85

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 of you happy. No other crown has ever been marketed as</p> <p>2 a crown for bruxers; in fact, most other crowns have run</p> <p>3 from this indication. Even cast gold, which does very</p> <p>4 well in bruxers, has never been marketed, per se.</p> <p>5 "The name keeps us from overpromising and</p> <p>6 underdelivering. The name BruxZir talks about the</p> <p>7 function of the crown and not the esthetics. It doesn't</p> <p>8 try to be something that's it's not. As the esthetics</p> <p>9 improve, dentists might even be surprised by how good it</p> <p>10 looks, but perhaps it should still be sold on toughness</p> <p>11 then. We have sold so many esthetic restorations over</p> <p>12 the years, I'd prefer to emphasize its physical</p> <p>13 advantages.</p> <p>14 "I like some of the other names too, but if we</p> <p>15 want to launch this cautiously without dentists</p> <p>16 expecting too much, BruxZir seems like a great name to</p> <p>17 do it with. It allows us to tell a story about the</p> <p>18 material, and it's a name dentists won't forget. I've</p> <p>19 always liked our product name Clinical Zirconia" --</p> <p>20 which is a different product that we have; it's a</p> <p>21 layered crown -- "which is a great name if dentists are</p> <p>22 familiar with the properties and benefits of zirconia.</p> <p style="text-align: right;">Page 86</p>	<p>1 before Glidewell decided to go forward with this name?</p> <p>2 A. I think it was probably decided then.</p> <p>3 You mean when did the first ad run?</p> <p>4 Q. Sure, when they --</p> <p>5 A. The first time it was seen in public?</p> <p>6 Q. When they started marketing it, putting the</p> <p>7 name on things.</p> <p>8 A. Do not know that date. Would guess a month, if</p> <p>9 I had to guess.</p> <p>10 Q. But not long after that exchange?</p> <p>11 A. Yeah, not long after that exchange I would</p> <p>12 think that it would all begin. Maybe two or three</p> <p>13 months just because of the lag rate for some of the</p> <p>14 dental journals, by the deadlines where you have to get</p> <p>15 your ads in.</p> <p>16 Q. Were you involved in the decision for how the</p> <p>17 name would be used, where it would be placed on</p> <p>18 products, what marketing channels would be used, things</p> <p>19 like that?</p> <p>20 A. No, not -- not a big part of that. Maybe a</p> <p>21 question thrown at me at lunch or something like that,</p> <p>22 but no, I'm primarily responsible for testing it and</p> <p style="text-align: right;">Page 88</p>
<p>1 "I field a lot of questions from dentists who</p> <p>2 don't know much about zirconia or e.max. Their</p> <p>3 questions tend to be indication-specific, 'What about on</p> <p>4 an endodontically treated incisor?' and yes, 'What</p> <p>5 should I use on a grinder?' BruxZir is a great answer."</p> <p>6 Q. Okay. Thank you for that.</p> <p>7 So even looking at your e-mail, you were at</p> <p>8 that time thinking about the indication of the product</p> <p>9 being used with bruxer patients; correct?</p> <p>10 A. Yes.</p> <p>11 Q. Now, that's kind of what I was getting at</p> <p>12 earlier was at that time in 2009 the fact that the crown</p> <p>13 would have a good application for people that grind</p> <p>14 their teeth was certainly in the minds of Glidewell;</p> <p>15 correct?</p> <p>16 A. Right, yeah, and that it was a replacement for</p> <p>17 the cast gold and the PFMs with the metal occlusals.</p> <p>18 Q. So having B-r-u-x at the beginning is a way of</p> <p>19 connoting this application of the product with somebody</p> <p>20 suffering from bruxism; correct?</p> <p>21 A. Yes, that's fair.</p> <p>22 Q. How long after this exchange do you recall</p> <p style="text-align: right;">Page 87</p>	<p>1 then the educational portion with the magazine and the</p> <p>2 videos and stuff like that.</p> <p>3 Q. And the decision of which marketing channels</p> <p>4 and labeling, things like that, that's under the purview</p> <p>5 of Jim Shuck; correct?</p> <p>6 A. What do you mean by "marketing channels"?</p> <p>7 Q. Advertising in magazines --</p> <p>8 A. Oh, okay. Yes, yes.</p> <p>9 Q. In fact, he heads the marketing department at</p> <p>10 Glidewell?</p> <p>11 A. That's correct, yes.</p> <p>12 Q. And what is your recollection of the reaction</p> <p>13 of the industry when the name was first being used? Do</p> <p>14 you have a recollection?</p> <p>15 Did people like the name?</p> <p>16 A. Well, the dentists did in that one room, you</p> <p>17 know, where I asked them about that, and that's really</p> <p>18 all who -- I really can't speak for the industry. Most</p> <p>19 of the people who I deal with are clients who are</p> <p>20 dentists at Glidewell.</p> <p>21 I seem to recall people -- yeah, dentists</p> <p>22 commenting on it favorably, but I think more important</p> <p style="text-align: right;">Page 89</p>

Pages 86 to 89

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 to them was the material itself. I think we got a lot</p> <p>2 more comments -- in fact, looking for that e-mail, I</p> <p>3 just noticed comments from a dentist that he sent in</p> <p>4 today about those crowns.</p> <p>5 So I don't think dentists concern themselves</p> <p>6 a lot with the marketing, per se. They're more</p> <p>7 concerned how the material's going to perform in the</p> <p>8 mouth, and there's certainly been a lot of positive</p> <p>9 comments about that.</p> <p>10 Q. So let's move forward now to the point where</p> <p>11 now a product is being sold under the name BruxZir,</p> <p>12 B-r-u-x-Z-i-r. Okay?</p> <p>13 A. Uh-huh.</p> <p>14 Q. At the beginning -- so we're in mid calendar</p> <p>15 year 2009 -- that name would have been associated with a</p> <p>16 monolithic zirconia crown; correct?</p> <p>17 A. Correct.</p> <p>18 Q. Was that the only product at the beginning at</p> <p>19 that time?</p> <p>20 A. Yes.</p> <p>21 Q. And today I believe the name is associated with</p> <p>22 a suite of products; is that fair?</p> <p>Page 90</p>	<p>1 A. Than a zirconia hockey puck.</p> <p>2 Q. Correct.</p> <p>3 A. Okay. Yes.</p> <p>4 Q. And I believe the BruxZir, B-r-u-x-Z-i-r, name</p> <p>5 is also being used on milling machines provided by</p> <p>6 Glidewell; is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. I believe the BruxZir name, B-r-u-x-Z-i-r, is</p> <p>9 also being used by Glidewell on products associated with</p> <p>10 coloring of crowns; is that correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Are there any other products you can think of</p> <p>13 that Glidewell puts the B-r-u-x-Z-i-r name on?</p> <p>14 A. I don't know if they put it on the ovens or</p> <p>15 not, but there is a centering oven that the authorized</p> <p>16 laboratories use once it's been milled. That's outside</p> <p>17 my area of interest, so I don't know if the oven says</p> <p>18 "BruxZir" on it or not. I wouldn't be surprised if it</p> <p>19 did.</p> <p>20 Q. Okay.</p> <p>21 A. It's kind of part of the system most of the</p> <p>22 time, but maybe most of the authorized labs already have</p> <p>Page 92</p>
<p>1 A. How many is a suite?</p> <p>2 Q. More than just the crown.</p> <p>3 A. I suppose. I tend not to think of it that way</p> <p>4 necessarily, but -- because -- well, I'm not sure what</p> <p>5 you're referring to.</p> <p>6 Q. Okay. Well, let me ask some more specific</p> <p>7 questions.</p> <p>8 Does Glidewell today market its unfinished</p> <p>9 zirconia blocks under the name "BruxZir," B-r-u-x-Z-i-r?</p> <p>10 A. Oh, yes. To outside laboratories? To</p> <p>11 authorized laboratories?</p> <p>12 Q. Correct.</p> <p>13 A. Yes.</p> <p>14 Q. So that's another use of the name which is</p> <p>15 separate from the use on, you know, the dental</p> <p>16 replacement products; correct?</p> <p>17 A. I'm not sure I get the distinction.</p> <p>18 Q. Well, it's a different product. I mean, you</p> <p>19 know, a crown --</p> <p>20 A. Right.</p> <p>21 Q. -- that the laboratory is providing for a</p> <p>22 particular patient is a different product than just --</p> <p>Page 91</p>	<p>1 their own ovens. So I'm not sure about that. Robin</p> <p>2 would probably know that.</p> <p>3 Q. Let me just hand you something that I saw for</p> <p>4 the first time this morning.</p> <p>5 A. Uh-huh.</p> <p>6 Q. Do you recognize what that is?</p> <p>7 A. Yes, I do. It's our version of a bur kit that</p> <p>8 Axis Dental was making for the last few years that had</p> <p>9 our name on it, but it was built by Axis and sold by</p> <p>10 Axis Dental products.</p> <p>11 Q. And it was --</p> <p>12 A. Because these zirconia materials require a</p> <p>13 different grit of bur -- of diamond on the bur than</p> <p>14 we're used to using for other ceramic materials.</p> <p>15 Q. That was my next question: What is a bur?</p> <p>16 What does that mean?</p> <p>17 A. A bur is the thing that -- that whiney sound</p> <p>18 from a handpiece that everybody hates from a dentist.</p> <p>19 So this is -- a bur is, I guess, for lack of a better</p> <p>20 term, a drill bit that gets put into the handpiece and</p> <p>21 is used to shape the tooth or to shape the porcelain on</p> <p>22 a crown. And the porcelain burs that we use</p> <p>Page 93</p>

Pages 90 to 93

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 traditionally don't work very well on zirconia, or e.max
2 for that matter, and so there was a new grit that had to
3 be used -- a new size of grit to be able to adjust these
4 full-contour zirconia crowns.
5 And so Axis Dental, who's a bur company, was
6 sending over samples in the beginning because we knew we
7 were going to have an issue when you put a BruxZir crown
8 off and you have -- and then you have to -- you put it
9 on the patient's tooth, and then three years later they
10 get decay around it and it has to be cut off. So I
11 wanted to make a video showing me cutting one off to
12 show dentists how to do it, and it took a lot of
13 experimentation with different grits of burs to find one
14 that would work reasonably well with zirconia.
15 So once they did that, they got our permission
16 to use the BruxZir name on the kit, and they've sold it
17 without any help from us, and we did not resell it.
18 Recently, because they felt that kit was too expensive,
19 there has been an effort to make one ourselves, but it
20 hasn't been sold yet to anybody. It's not actually
21 commercially available at this point.
22 Q. So what you were looking at right there was
Page 94

1 made by Axis Dental products?
2 A. No, that was not -- that's not the Axis one
3 that available for sale.
4 Q. Oh, this is not the Axis?
5 A. No. This is the one that Glidewell is having
6 made somewhere else as a cheaper alternative to the one
7 that Axis sells.
8 Q. Okay. So this is being made on behalf of
9 Glidewell?
10 A. On behalf of Glidewell, but it hasn't been
11 released yet.
12 Q. And I see this one does have the BruxZir,
13 B-r-u-x-Z-i-r, name on it; correct?
14 A. Yes.
15 Q. And so Glidewell's intention, I guess, when
16 it's ready, is to offer this adjustment/polishing kit
17 under the BruxZir name; correct?
18 A. That's correct.
19 Q. Okay. So today you can actually get a kit like
20 this under the BruxZir name provided by Axis Dental
21 products?
22 A. Correct.
Page 95

1 Q. So this is another type of product that does
2 have the name BruxZir, B-r-u-x-Z-i-r, associated with
3 it?
4 A. Correct. I didn't include that initially
5 because I thought the question was provided by
6 Glidewell, and the bur kit was provided by Axis.
7 Q. Understood, sure.
8 Are there any other products provided by
9 Glidewell or other parties that use the BruxZir name
10 other than the ones we've been discussing so far?
11 A. There are some other companies who have used
12 the name in their advertisement, that their product is
13 compatible with BruxZir, for example. I mean, there's
14 only one I can think of, a cement company, Ceramir,
15 C-e-r-a-m-i-r, whose cement contains those phosphates
16 that I mentioned before, the only thing that bonds to
17 zirconia. And so their cement actually bonds to it.
18 And I think -- I'm not 100 percent sure, but I
19 think they've used the BruxZir trade name in an
20 advertisement.
21 Q. Because they're saying, "Our cements can be
22 used with" --
Page 96

1 A. Works with.
2 Q. -- BruxZir --
3 A. Yeah.
4 Q. Okay.
5 A. But that's not on a product, per se. That's
6 just in an advertisement. So I don't know if that's...
7 Q. Okay.
8 A. Then I guess that opens it up to the
9 185 authorized labs that are using BruxZir in their
10 advertisements as well. But...
11 Q. Right. So let's talk a little bit about that.
12 The 180 authorized labs are labs that have a
13 relationship with Glidewell under which they can use the
14 BruxZir name; correct?
15 A. Correct.
16 Q. And what's your understanding of what these
17 authorized labs are authorized to do?
18 A. Again, that's not really my area of expertise,
19 but I would say that they're authorized to fabricate,
20 sell and advertise BruxZir crowns and bridges to their
21 dentists.
22 Q. And these 180 authorized labs, they purchase
Page 97

Pages 94 to 97

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 the zirconia from Glidewell; is that correct?
2 A. Correct.
3 Q. So among other aspects of the relationship,
4 the 180 authorized labs are customers of Glidewell Labs
5 for purposes of getting the unfinished zirconia hockey
6 pucks, as you called them?
7 A. Correct.
8 Q. And dentists, then, will fill out prescriptions
9 that can be sent to the authorized labs, who can then
10 create individualized crowns for their patients using
11 the zirconia provided by Glidewell to the authorized
12 labs; correct?
13 A. Correct.
14 Q. Do you have an understanding for -- you know,
15 is Glidewell compensated in any way by these labs apart
16 from the fact that they're purchasing the zirconia?
17 A. No, not to my knowledge.
18 Q. I mean, obviously Glidewell makes money from
19 selling the zirconia --
20 A. Right.
21 Q. -- and your understanding is that's how
22 Glidewell makes money from them?
Page 98

1 A. Right.
2 Q. Okay. And do you have an understanding as to
3 whether, you know, Glidewell monitors what these labs
4 are doing in terms of how they're creating the crowns
5 and other products?
6 A. I do not know what they do to monitor how those
7 crowns are being made.
8 Q. Do you know who within Glidewell would know
9 that?
10 A. I think Robin Carden.
11 Q. Robin?
12 MR. JANKOWSKI: We're at a point where the
13 videographer needs to change the tape, and it's also
14 about 10 minutes to noon. So why don't we just take a
15 lunch break now.
16 MR. TACHNER: Sure.
17 MR. JANKOWSKI: So I think an hour would be
18 fine.
19 THE WITNESS: Okay.
20 MR. TACHNER: With us, yes.
21 THE VIDEOGRAPHER: Off the record at 11:47 a.m.
22 (Whereupon, at 11:47 a.m., the
Page 99

1 deposition of MICHAEL DITOLLA was
2 adjourned for noon recess.)
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Page 100

1 (At 12:58 p.m., the deposition of
2 MICHAEL DITOLLA was reconvened.)
3 THE VIDEOGRAPHER: And we are on the record at
4 12:58 p.m. This is the beginning of Tape 2.
5
6 EXAMINATION (RESUMED)
7 BY MR. JANKOWSKI:
8 Q. Now, Dr. DiTolla, you understand that you are
9 still under oath; correct?
10 A. I do.
11 Q. Okay. When we broke, we were talking about
12 the 180 authorized labs that Glidewell has and what they
13 do, and we'll talk a little bit more about that. I
14 think I have some documents that I'll put in front of
15 you --
16 A. Okay.
17 Q. -- and we'll talk more about that, but...
18 Do you personally deal with the authorized labs
19 at all?
20 A. No, I don't.
21 Q. And, again, I think we established earlier that
22 you tend to be associated with a clinical role for one
Page 101

Pages 98 to 101

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 thing; correct?</p> <p>2 A. Yes.</p> <p>3 Q. And then from that clinical role, that's used</p> <p>4 for educational purposes and also for marketing</p> <p>5 purposes; correct?</p> <p>6 A. Correct.</p> <p>7 Q. Are there any other roles you play at</p> <p>8 Glidewell?</p> <p>9 A. No, that's about it. I'm editor of the</p> <p>10 magazine, but that falls under -- we have a magazine we</p> <p>11 can send out to dentists. That falls under the</p> <p>12 marketing and education, both of them. I publish some</p> <p>13 of the cases that we do. The ones for whatever reason</p> <p>14 might not be great on video, we'll put them in the</p> <p>15 magazine. But, no, that falls under the same heading</p> <p>16 with the other stuff.</p> <p>17 Q. And that magazine is called Chairside; correct?</p> <p>18 A. That's correct.</p> <p>19 Q. So you have some say over the content of what's</p> <p>20 in Chairside?</p> <p>21 A. I do.</p> <p>22 Q. Do you have a formal title? Are you the</p> <p style="text-align: right;">Page 102</p>	<p>1 Q. What is Exhibit 44?</p> <p>2 A. That is my website.</p> <p>3 Q. When you say "my website," this is not a</p> <p>4 Glidewell --</p> <p>5 A. No.</p> <p>6 Q. Okay. What is your website for?</p> <p>7 A. In addition to what I do at Glidewell, I also</p> <p>8 give lectures out to the dental community, and so this</p> <p>9 is kind of a resource for that.</p> <p>10 Q. Is this also part of the continuing education</p> <p>11 you talked about earlier, or is this separate from that?</p> <p>12 A. No, this is separate.</p> <p>13 Q. So is this kind of a side business that you do?</p> <p>14 A. Yeah, this is something that I was doing before</p> <p>15 I came to Glidewell and really has nothing to do with</p> <p>16 Glidewell. They don't pay for it or reimburse me in any</p> <p>17 way. They get a small benefit probably of having me out</p> <p>18 in public talking about things and get a little</p> <p>19 recognition when I'm out there.</p> <p>20 Q. But it's an indirect benefit because you're not</p> <p>21 there as a Glidewell representative?</p> <p>22 A. That's correct.</p> <p style="text-align: right;">Page 104</p>
<p>1 editor?</p> <p>2 A. I am.</p> <p>3 Q. And, likewise, there are videos that are</p> <p>4 available on Glidewell's website; correct?</p> <p>5 A. Correct.</p> <p>6 Q. And are you responsible for the content of the</p> <p>7 videos?</p> <p>8 A. I am, yes.</p> <p>9 Q. And many, if not all the videos, feature you as</p> <p>10 well; correct?</p> <p>11 A. I believe they all do.</p> <p>12 MR. JANKOWSKI: I'm going to have the</p> <p>13 court reporter mark as Exhibit 44 a two-page document</p> <p>14 that includes printouts from a website associated with</p> <p>15 something called Distinctive Dental Seminars.</p> <p>16 (Whereupon, Exhibit 44 was marked</p> <p>17 for identification.)</p> <p>18 BY MR. JANKOWSKI:</p> <p>19 Q. Dr. DiTolla, if I could just have you just look</p> <p>20 at Exhibit 44 and ask you, do you recognize what's shown</p> <p>21 in Exhibit 44?</p> <p>22 A. I do.</p> <p style="text-align: right;">Page 103</p>	<p>1 Q. And just from looking at the website, it looks</p> <p>2 to me like what your website is about is you presenting</p> <p>3 talks on, you know, dental topics; is that fair?</p> <p>4 A. That's fair.</p> <p>5 Q. What topics do you tend to talk about in</p> <p>6 connection with Distinctive Dental Seminars?</p> <p>7 A. Really, just one lecture this year, kind of an</p> <p>8 all-encompassing lecture called "The Modern Restorative</p> <p>9 Practice."</p> <p>10 Q. So it varies year to year.</p> <p>11 A. Things change, yeah, as time goes on. Some</p> <p>12 things get more popular than other things, and certain</p> <p>13 things like porcelain veneers, like we talked about</p> <p>14 before, have become a subject that the dental societies</p> <p>15 don't seem to have a lot of interest in anymore.</p> <p>16 Q. Who's your audience for these presentations?</p> <p>17 A. Dentists who are required to have about</p> <p>18 50 hours of continuing education every two years. So</p> <p>19 the local dental societies they belong to bring speakers</p> <p>20 in to come in for six, seven hours a day and provide a</p> <p>21 course for them, and then they receive their CE credits</p> <p>22 after that.</p> <p style="text-align: right;">Page 105</p>

Pages 102 to 105

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 Q. So you will be hired by those local dental
2 societies to give these talks in connection with a CE
3 program?
4 A. Exactly.
5 Q. So you'll give these presentations, I guess,
6 various places around the United States?
7 A. Correct.
8 Q. How long have you been doing this?
9 A. First one was in 1995. So 17 years?
10 Q. And you've been doing it every year since?
11 A. Yes.
12 Q. Who decides what the subject matter of the talk
13 is?
14 A. It depends. It's -- the dental societies may
15 request a certain topic, or they may ask, "What's
16 your 2013 presentation that you're giving?" And so it's
17 typically between me and them deciding together what
18 it's going to be.
19 Q. Do you have a staff associated with this, or do
20 you just handling it by yourself?
21 A. No, yeah, it's not -- it doesn't require a lot
22 of -- very low overhead. Doesn't require a lot of extra
Page 106

1 work to do.
2 Q. I see from the website you were, it looks like,
3 awarded something called Dr. Bicuspid in 2011; is that
4 right?
5 A. Yes. That's dentistry's version of the Academy
6 Awards, but not really.
7 Q. Yeah, and it says "Most Effective Dental
8 Educator." That's a nice accolade to have.
9 A. It's something.
10 MR. JANKOWSKI: Dr. DiTolla, I'm putting in
11 front of you a document. This has already been marked
12 at the deposition last week as Exhibit 36, and it's a
13 two-page document entitled "Glidewell Laboratories," and
14 it seems to have an organizational chart.
15 (Whereupon, Exhibit 36 was marked
16 for identification.)
17 BY MR. JANKOWSKI:
18 Q. Dr. DiTolla, do you recognize what's been
19 previously marked as Exhibit 36?
20 A. Yes, I do. I've never seen it laid out quite
21 this way, so I can't say I recognize this exact layout,
22 but I've seen an org chart similar to this before, and
Page 107

1 it appears that everybody's in the position that they
2 should be.
3 Q. So Glidewell Laboratories does maintain an
4 org chart like this or with this kind of information in
5 the ordinary course of business; is that correct?
6 A. Yes, I've seen one before.
7 Q. On this org chart, you're identified near the
8 middle of the org chart underneath "James Shuck,
9 VP Advertising/Marketing."
10 Do you see that?
11 A. Yes, I do.
12 Q. And that's an accurate understanding of the
13 relationship between you and Mr. Shuck.
14 A. Yes. I report to him.
15 Q. Does anybody report to you?
16 A. Yeah, I've got a couple employees working for
17 me, a hygienist, dental assistant and an associate
18 dentist.
19 Q. So they're associated with the clinical work
20 that you do that we were talking about earlier?
21 A. Yes.
22 Q. How about Michael Cash, who's showed on here as
Page 108

1 also being underneath James Shuck? Do you work with
2 Mr. Cash at all?
3 A. I do. He'll ask for stuff from time to time.
4 We sit in the same office, so it's not -- he's just
5 always -- to turn and ask me a question. But most of
6 what I do -- as you mentioned, I'm in charge of the
7 content for the magazine and the DVDs, so I'm doing it
8 without a ton of input from Mike Cash or Jim Shuck.
9 Q. What's your understanding of what Mr. Cash's
10 areas of responsibilities are for marketing and
11 advertising?
12 A. He is responsible for planning the advertising
13 schedule in the different dental journals. He does
14 the -- a lot of the beginning work putting the
15 advertisements together, and then it's brought to
16 Jim Shuck to see and approve. And they'll work on the
17 wording and the headlines and things like that together,
18 and they might ask me for clinical images if they need
19 some pictures for an advertisement.
20 So he does, really, a lot of the organizational
21 work, deciding what advertisements are going to go where
22 and when and what mailings are going to be done and how
Page 109

Pages 106 to 109

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 many are going to be done and what dentists they're
2 going to go to.
3 Q. And if he's going to create an advertisement
4 that does have a clinical photograph or two in it, he's
5 going to come to you to get the photographs?
6 A. Most likely, but there's some well-established
7 photographs that we have on our central server. So if
8 he needs pictures of e.max crowns, he knows where to get
9 them. He might turn and say, "Do you have any new
10 ones?"
11 Q. Because he's used them before, for example?
12 A. Perhaps, yeah.
13 Q. Do you have an understanding for what are the
14 responsibility of Dwight Brown, who's listed here as a
15 senior marketing specialist?
16 A. No, I don't, and I'm not even sure what that
17 title means, to tell you the truth. He's probably been
18 there -- I don't know -- maybe a year or two now, but I
19 do not have many dealings with him. I see him, I know
20 him, but I don't know exactly what --
21 Q. Okay.
22 A. -- he does.

Page 110

1 Q. Does this org chart look complete to you in
2 terms of the advertising and marketing people,
3 understanding that there's lower-level employees, but
4 for the higher-level employees is this the full list of
5 people?
6 A. Yes. I think everybody else would be
7 considered on a lower level. Even those departments
8 where there's somebody, you know, who's the manager,
9 quote, unquote, of that department, they would not be on
10 the org chart, I don't think.
11 Q. And as you said before, I guess, you do have
12 some input into the advertising and marketing beyond the
13 clinical work you do and the videos and so on in the
14 sense that you were asked about the brand name BruxZir;
15 correct?
16 A. Yes.
17 Q. And you did contribute to the motto "More" --
18 what was the motto again?
19 A. "More Brawn than Beauty."
20 Q. "More Brawn than Beauty," right.
21 I think I've seen another motto, an updated
22 motto where the "than" is slashed out.

Page 111

1 A. That's correct.
2 Q. And what's it replaced with?
3 A. "More Brawn and Improving Beauty."
4 Q. Right, right.
5 Do you know who came up with that updated
6 version of the motto?
7 A. Jim Shuck did. I remember standing next to him
8 as we were trying to figure out what words -- what words
9 to use.
10 Q. And, again -- I mean, we've talked about this
11 already, but this particular product was really one that
12 was designed because of -- or the appeal of it to
13 Glidewell was the brawn aspect initially; correct?
14 A. The appeal for me initially -- I've asked the
15 R&D department for the last 10 years -- when they come
16 to me at the beginning of the year at the planning
17 session and say, "What can we do for you this year?"
18 I've always asked them for a cast gold material that's
19 white like a tooth so patients will accept it. For me
20 it was wanting to be able to have a cast gold
21 replacement.
22 I guess strength was part of that, but we did

Page 112

1 not set out to find a stronger crown. You know, we were
2 looking for -- we started playing with this material and
3 realized it was strong, and for me the key point was
4 that I could use it on patients who didn't want gold.
5 Q. Isn't it true, though, that the patients who
6 need gold or are indicated for gold are in need of a
7 strong crown?
8 A. It depends. It depends on the clinical
9 conditions, whether it's a short clinical crown. It
10 depends if they've had some sort of accident where
11 there's just not a lot of tooth to grab onto or the
12 tissue's growing around it. It doesn't necessarily --
13 it almost needs to be strong more by virtue of the fact
14 that it's in the back of the mouth with those huge
15 biting portions. So by that definition, yes. If it's
16 in the back of the mouth, it's got to be a pretty strong
17 crown, or it's going to get killed.
18 Q. And the fact that the PFM solution doesn't work
19 as well back there for these patients because of --
20 you know, it's a weaker crown when you consider the
21 whole thing; correct?
22 A. Because of the glass on the top of it, correct.

Page 113

Pages 110 to 113

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 Q. Right. So having a monolithic crown of a
2 strong material is a big improvement in terms of the
3 brawn; correct?
4 A. Yes.
5 Q. And that's the origin of the motto "More Brawn
6 than Beauty" for the original product; correct?
7 A. Correct.
8 Q. And the updated motto is essentially telling
9 the world, "Hey, we still have the brawn, and we're
10 improving the beauty"; is that fair?
11 A. Correct.
12 Q. I think you may have answered this already, but
13 on the org chart, Exhibit 36, you don't see anything
14 that looks incorrect to you in this org chart?
15 A. You mean that I'm not a level up higher? Is
16 that what you're...
17 (Laughter.)
18 BY MR. JANKOWSKI:
19 Q. Well, not where you should be --
20 A. Oh.
21 Q. -- just if you think it accurately represents,
22 you know, the personnel at Glidewell to your
Page 114

1 understanding of what their responsibilities are.
2 A. Yes, it does.
3 Q. Okay. Let me change subjects just for a minute
4 here and just ask you, what did you do to prepare for
5 the deposition today?
6 A. Sat with Leonard and Jim Shuck, and I guess
7 Keith was there for about a half hour, and had a
8 discussion.
9 Q. And when did you sit down with these folks?
10 A. Two weeks ago?
11 Q. So about two weeks ago you had a face-to-face
12 meeting; is that correct?
13 A. Uh-huh, yes, we did.
14 Q. With Mr. Tachner and Mr. Shuck and -- I'm
15 sorry. Who was the third person?
16 A. Keith Allred.
17 Q. Keith Allred. Okay.
18 So he's in-house counsel at Glidewell.
19 A. That's correct.
20 Q. Okay.
21 A. Oh, and Robin Carden was there for the first
22 half, I believe.
Page 115

1 Q. So Mr. Allred was there for part of it?
2 A. All of it.
3 Q. Oh, he was there for all of it, and Mr. Carden
4 was there for part of it?
5 A. I believe he was there for, yeah, the first
6 half to two thirds of it.
7 Q. And then Mr. Shuck was there for all of it;
8 correct?
9 A. Right.
10 Q. And did talking with these individuals, did any
11 of the discussion refresh your memory about the facts
12 that we're talking about today?
13 A. I don't recall any talking about the facts that
14 we've discussed so far today. It was more --
15 MR. TACHNER: I caution the witness not to say
16 anything about the content of that discussion since it
17 was protected by attorney-client privilege.
18 THE WITNESS: Well, yeah, I was going to say I
19 just remember you had that handout, that kind of
20 standard copy handout that you had about behavior at
21 depositions, general rules and guidelines for being
22 deposed.
Page 116

1 BY MR. JANKOWSKI:
2 Q. Okay. So you don't recall any facts associated
3 with, you know, the lawsuit generally that you
4 remembered because of the meeting that you didn't recall
5 beforehand to help you testify today?
6 MR. TACHNER: Same caution.
7 THE WITNESS: Say it again.
8 BY MR. JANKOWSKI:
9 Q. From that meeting, did you remember any facts
10 that you now have knowledge of that you didn't recall or
11 that weren't in your memory prior to that meeting?
12 A. No, not facts.
13 Q. Did you review documents at that meeting, aside
14 from a document --
15 A. No, I did not see --
16 Q. -- provided by your --
17 A. -- any documents besides that --
18 Q. Okay.
19 A. -- xeroxed copy.
20 Q. So you didn't look at documents relating to,
21 you know, the BruxZir product or anything like that?
22 A. No, I don't remember seeing any documents
Page 117

Pages 114 to 117

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 relating to any of that.
2 Q. Any other meetings, or just the one meeting two
3 weeks ago?
4 A. Just that one.
5 Q. How long did that meeting last?
6 A. 30 minutes? 40 minutes perhaps, at the
7 longest.
8 Q. Was that held at Glidewell's offices?
9 A. Yes, it was.
10 MR. JANKOWSKI: Now, Dr. DiTolla, I'm going to
11 put in front of you a document that has already been
12 marked as an exhibit called Exhibit 8.
13 (Whereupon, Exhibit 8 was marked
14 for identification.)
15 THE WITNESS: Okay.
16 BY MR. JANKOWSKI:
17 Q. It's a multipage document -- color document.
18 Looks like it might be 20 pages long.
19 A. Okay.
20 Q. And it looks like printouts or hard copies of
21 what would appear on a computer screen. If you could
22 just briefly look at previously marked Exhibit 8.
Page 118

1 A. Okay.
2 Q. My understanding is that this is kind of an
3 assemblage of documents associated with what Glidewell
4 calls e-mail blasts.
5 Are you familiar with Glidewell doing something
6 called e-mail blasts?
7 A. I am with the ones that go to dentists, not as
8 familiar with ones that go to labs. I don't have
9 anything to do with those.
10 Q. So Glidewell actually has different types of
11 e-mail blasts, those to dentists and those directed at
12 labs?
13 A. Correct.
14 Q. Okay. And the ones that are shown here in
15 Exhibit 8, who's the audience for these e-mail blasts?
16 A. Page 1 is laboratories.
17 Q. Okay.
18 A. Page 2 is dentists.
19 3 is just a list of some of those 180
20 authorized labs.
21 Q. Uh-huh.
22 A. 4 is to the laboratories.
Page 119

1 5 is to the laboratories.
2 6 is the labs.
3 7 is dentists.
4 8 is labs.
5 You want all these?
6 Q. Yes.
7 A. 9 is dentists.
8 10 is labs.
9 11 is labs.
10 12 is dentists.
11 13 is dentists.
12 14 is German. I don't know who that's for.
13 Q. Maybe German dentists?
14 A. Could be, or German labs. It looks like it's a
15 German version of a dentist ad, to tell you the truth,
16 just looking at the bullet points that are there and the
17 way it's laid out.
18 15, laboratories.
19 16, labs.
20 17, labs.
21 18, labs.
22 19, labs.
Page 120

1 And 20, dentists.
2 Q. I notice, looking up at the top of each page --
3 because it's a printout that actually shows a URL inside
4 a little box at the top. Do you see that?
5 A. Yes, I do.
6 Q. And it looks to me that each of these URLs
7 includes a date in it. So, for example, on page 1 I see
8 "2011-08." Do you see that?
9 A. I do.
10 Q. I would interpret that that this was a blast
11 that went out in August 2011. Do you think that's
12 accurate?
13 A. It seems that it could also be the date the ad
14 was created, not necessarily sent. I don't know. I'm
15 not sure. And I don't know what "Web Test" at the
16 beginning means either. If it was a real -- I'm not --
17 I'm...
18 Q. Okay. Well, this is the form the documents
19 were produced by Glidewell.
20 A. Oh, okay.
21 Q. But you'd agree with me that those look like
22 they're probably a year and a month?
Page 121

Pages 118 to 121

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 A. Yes, definitely.</p> <p>2 Q. Is it also your understanding -- if you just</p> <p>3 flip through here, you'll see these things have</p> <p>4 different years and months associated with them,</p> <p>5 suggesting the e-mail blasts go out every couple of</p> <p>6 months. Is that consistent with your understanding?</p> <p>7 A. That sounds about right.</p> <p>8 Q. Okay. Looking on the front page of Exhibit 8,</p> <p>9 I see a reference to a BruxZir -- spelled</p> <p>10 B-r-u-x-Z-i-r -- solid zirconia crowns and bridges,</p> <p>11 "More Brawn than Beauty."</p> <p>12 And that's exactly what we've been talking</p> <p>13 about, the motto associated with the BruxZir crown</p> <p>14 product; correct?</p> <p>15 A. Correct.</p> <p>16 Q. I keep seeing that model there. Is that a</p> <p>17 Glidewell employee, or is that probably some</p> <p>18 professional model?</p> <p>19 A. That, I think, is somebody who we brought in</p> <p>20 and did a photo shoot with. We do have other employees</p> <p>21 who we use for modeling, but we've worked our way</p> <p>22 through most of the photogenic men and women in the</p> <p style="text-align: right;">Page 122</p>	<p>1 to the hockey pucks that are provided to the labs?</p> <p>2 A. Oh, no, that's to the crowns.</p> <p>3 Q. That's to the crowns?</p> <p>4 A. This is a dentist e-mail.</p> <p>5 Q. That's true. They wouldn't tend to be</p> <p>6 promoting the solid zirconia hockey pucks to the</p> <p>7 dentists. Those would be for the labs; correct?</p> <p>8 A. Right. But I -- yeah. And I really think</p> <p>9 for -- and I don't know. I'd have to look through here,</p> <p>10 but I think probably we don't have to -- we probably</p> <p>11 call it BruxZir Solid Zirconia to them as well when</p> <p>12 referring to the pucks, but their material knowledge is</p> <p>13 so much higher than the dentists that you probably</p> <p>14 wouldn't have to spell it out for them like we try to do</p> <p>15 for dentists to educate them.</p> <p>16 Q. So the reference to solid zirconia there is</p> <p>17 reference to the fact that the whole crown is solid</p> <p>18 zirconia?</p> <p>19 A. Correct.</p> <p>20 Q. And if we look down below, about halfway down</p> <p>21 the page below the video, there is a statement -- or a</p> <p>22 paragraph that starts with the words "When we launched."</p> <p style="text-align: right;">Page 124</p>
<p>1 laboratory. We have a couple on there, waitress from a</p> <p>2 local deli and things like that. So we do go outside</p> <p>3 the building at times.</p> <p>4 Q. If we turn to page 2, I see an e-mail blast</p> <p>5 from -- looks like from late 2011 that now has, as we</p> <p>6 were talking about, "More Brawn and Improving Beauty."</p> <p>7 Do you see that?</p> <p>8 A. Yes, I do.</p> <p>9 Q. That was exactly what we were talking about</p> <p>10 before.</p> <p>11 And at the top of that page, I see the BruxZir,</p> <p>12 B-r-u-x-Z-i-r, with "solid zirconia" next to it. Do you</p> <p>13 see that?</p> <p>14 A. I do.</p> <p>15 Q. So I would interpret that as a reference, at</p> <p>16 least that little part of the reference, to the zirconia</p> <p>17 material; is that fair, or am I misinterpreting that?</p> <p>18 Or is that more a reference just to the crown, how it's</p> <p>19 being used there?</p> <p>20 A. Say it again.</p> <p>21 Q. Well, what I'm asking is, is the reference</p> <p>22 there to the solid zirconia a reference to the crowns or</p> <p style="text-align: right;">Page 123</p>	<p>1 Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. And this is the discussion back in 2009 we</p> <p>4 talked about this morning, a characterization of that.</p> <p>5 Do you recall that?</p> <p>6 A. Yes.</p> <p>7 Q. Can you just read into the record that little</p> <p>8 paragraph right there that starts "When we launched."</p> <p>9 A. "When we launched BruxZir Solid Zirconia crowns</p> <p>10 and bridges in 2009, our intention was to provide a</p> <p>11 monolithic zirconia restoration indicated for bruxers</p> <p>12 and grinders as an esthetic alternative to posterior</p> <p>13 metal occlusal PFMs and full-cast metal restorations.</p> <p>14 The result was a material we said was 'More Brawn than</p> <p>15 Beauty.'"</p> <p>16 Q. Okay. And that's consistent with what we've</p> <p>17 been talking about today, you'd agree?</p> <p>18 A. I agree.</p> <p>19 Q. Then the next paragraph goes on to talk about</p> <p>20 "More Brawn and Improving Beauty." Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. And I think we've talked about that as well,</p> <p style="text-align: right;">Page 125</p>

Pages 122 to 125

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 how a lot of what Glidewell has been doing is trying to
2 make the product look more like a human tooth; is that
3 fair?
4 A. Correct.
5 Q. Then in the third paragraph I see a reference
6 to a patent pending process. Do you see that?
7 A. I do.
8 Q. Do you have any knowledge about that? I mean,
9 is it still patent pending?
10 A. That's a good question for Robin Carden.
11 Q. Okay.
12 A. I think it's been approved, but I'm not sure.
13 Q. You haven't been involved in the patent
14 application process?
15 A. Thankfully, no. It doesn't look pleasant.
16 Q. And then turning to page 3 of Exhibit 8, I
17 think you already said this is at least a partial list
18 of the 180 or so authorized laboratories out there;
19 correct?
20 A. Correct.
21 Q. And turning to page 4 of Exhibit 8, this is now
22 something which is directed at laboratories, not
Page 126

1 dentists, but it still uses the motto "More Brawn than
2 Beauty." Do you see that?
3 A. I do.
4 Q. I see you're referenced here, and maybe that's
5 a click button where it says "Dr. Michael DiTolla talks
6 about BruxZir Total Zirconia." Do you see that?
7 A. I do.
8 Q. Do you know what -- is that a click button,
9 like you click on it, and something happens?
10 A. It is.
11 Q. What happens if you click on that button?
12 A. I don't know -- well, obviously a movie of me
13 talking about BruxZir launches, but I can't recall which
14 one it is. That was 2009 --
15 Q. Sure.
16 A. -- and, yeah, we've replaced them and updated
17 them.
18 Q. But it's not uncommon for Glidewell to send out
19 e-mail blasts with the ability of the recipient to click
20 and get a video from you; is that fair?
21 A. To click and be able to do something.
22 Sometimes it might be a video; other times it might just
Page 127

1 be a written piece, some more information.
2 Q. And then turning to page 5 of Exhibit 8, again,
3 this would be a page that's directed at the authorized
4 laboratories; correct?
5 A. Correct.
6 Q. And here I see towards the bottom third of the
7 page a reference to BruxZir Milling Blanks.
8 Do you see that?
9 A. I do.
10 Q. This is the hockey pucks we were talking about
11 earlier; correct?
12 A. Correct.
13 Q. In fact, I see them there. Kind of thin, but
14 otherwise absolutely looking like hockey pucks; right?
15 A. Correct.
16 Q. So that's the raw material from which a BruxZir
17 crown or bridge would be made?
18 A. That's correct.
19 Q. And this is also showing that the term
20 "BruxZir," B-r-u-x-Z-i-r, is used by Glidewell in
21 connection with the raw material in addition to being
22 used in connection with the crown; correct?
Page 128

1 A. Yeah, but I'm not sure about your use of the
2 term "raw material." You know, when we speak about raw
3 material, we mean the zirconia powder that we get and
4 that we form into these pucks. We don't refer to these
5 pucks as raw material.
6 Q. Okay. That's a good point. Right, no, this
7 has already gone through a lot of processing.
8 A. Right.
9 Q. So the milling blanks that Glidewell provides
10 to its authorized labs are something that they provide
11 associated with the name BruxZir --
12 A. Correct.
13 Q. -- b-r-u-x-Z-i-r?
14 A. Correct.
15 Q. Okay. Now turning to page 6 of Exhibit 8, this
16 is going to be another page which is directed to the
17 authorized labs; correct?
18 A. That's right.
19 Q. In fact, it says right there "Dear authorized
20 BruxZir lab"; right?
21 A. Yes.
22 Q. It's pretty clear about that.
Page 129

Pages 126 to 129

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 And I see there's a reference a few lines down 2 to an exclusive website just for authorized BruxZir 3 labs. Do you see that? 4 A. I do. 5 Q. That's a website that you're aware of? 6 Is that something that you provide content to? 7 A. I do not. I have never been to that website, 8 to be honest. 9 Q. You don't have any personal knowledge as to 10 what's in that website? 11 A. I don't. 12 Q. On this page at the very bottom there's a PS, 13 and it says, "View Dr. DiTolla's latest clinical video 14 'Unique Shade Considerations for BruxZir' online now." 15 Do you see that? 16 A. I do. 17 Q. Do you recall creating a clinical video 18 entitled "Unique Shade Considerations for BruxZir"? 19 A. I do. 20 Q. Generally speaking, what is in that video? 21 A. What's in the video is before -- this goes back 22 to the older days of BruxZir before it was as</p> <p style="text-align: right;">Page 130</p>	<p>1 A. It would snap your head back when you saw some 2 of these teeth -- 3 Q. Right. 4 A. -- and then you'd try it in the mouth and it 5 would look better. So it was kind of a heads-up not 6 only to dentists, but to the authorized labs to make 7 sure they didn't get a lot of kickback from their 8 dentists as well. 9 Q. All right. Turning to page 7 of Exhibit 8, so 10 this is a page, I think you said, which is directed at 11 the dentists, not the labs; correct? 12 A. Correct. 13 Q. This particular blast makes reference to a wear 14 study, w-e-a-r. Do you see that? 15 A. Yes. 16 Q. And, in particular, comparing BruxZir and 17 Ceramco. And I think you talked a bit about these wear 18 studies this morning; correct? 19 A. Correct. 20 Q. So here you're just educating dentists, just 21 giving them information to help them decide on their 22 selection of crowns; is that fair?</p> <p style="text-align: right;">Page 132</p>
<p>1 translucent as it is now, and so the light affected it 2 in kind of an odd way. So when the crown was sitting 3 out on a table like this and the light hit it, it looked 4 ugly, and you'd go, "That doesn't look good." 5 And then when you put it in the mouth and you 6 got off the light, and the tongue and the cheek were 7 there, then it blended in well. And we realized that we 8 should probably explain to dentists that this was 9 happening. 10 I think we might have taken this one down 11 because it doesn't occur anymore -- take that video 12 down. But we wanted to make sure that they understood 13 that when you open the box, if you look at the crown and 14 it doesn't look like a tooth, you know, still try it in 15 the mouth to see what it looks there to see what the 16 final shade's going to be. 17 Q. This is similar to the people in Home Depot 18 like finding a paint and saying, "That looks great," and 19 then they put it on their walls at home, and they're 20 like, "That's not what I chose." 21 A. Except this is the opposite. 22 Q. The opposite.</p> <p style="text-align: right;">Page 131</p>	<p>1 A. That is fair. 2 Q. In fact, I there's a link. It says, "Read full 3 study here." There's a link on here so they can 4 actually read the study itself; is that right? 5 A. That's correct. 6 Q. And this particular study, it looks like, was 7 done at the University of -- I don't speak German very 8 well, but University of Tübingen, Germany. Is that your 9 understanding as well? 10 A. Correct. 11 Q. So was that study -- that study would have been 12 done with crowns provided by Glidewell; correct? 13 A. Yes. 14 Q. Do you know if this was going to be an in vitro 15 or an in vivo study? 16 A. This is in vitro. You can see by the 17 conclusion where it says 1.2 million wear cycles. 18 That's really tough to measure on a human. 19 Q. Yeah, so this is a simulated -- 20 A. Right. 21 Q. Like a chewing machine? 22 A. Exactly.</p> <p style="text-align: right;">Page 133</p>

Pages 130 to 133

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 Q. Okay. If you turn to page 8 of Exhibit 8,</p> <p>2 there's another page I believe that has been provided to</p> <p>3 the labs, and this one is a technical update.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. So this is a particular kind of e-mail blast,</p> <p>7 if you will; right? More technical in nature?</p> <p>8 A. Yes.</p> <p>9 Q. This one says, "Do not use to discs finish</p> <p>10 full-contour zirconia." Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. First of all, I do see that phrase</p> <p>13 "full-contour" a lot. What does "full-contour" mean?</p> <p>14 A. "Full-contour" refers to the shape of the crown</p> <p>15 in its final shape. So zirconia's beginning was as a</p> <p>16 coping material with porcelain on it. So "full-contour"</p> <p>17 is probably another way of saying "monolithic."</p> <p>18 "Monolithic" is a word probably more used by</p> <p>19 the dentists, and "full-contour" is probably used more</p> <p>20 by the laboratories, but they mean the same thing,</p> <p>21 essentially. I mean, I guess you could have a</p> <p>22 bilayered, full-contoured crown, but there's no way to</p> <p style="text-align: right;">Page 134</p>	<p>1 that sits on a tooth, and this is an abutment tooth, and</p> <p>2 that's called the pontic in the middle. And where the</p> <p>3 abutment and the pontic connect together, it needs to be</p> <p>4 27 square millimeters, height squared times the width.</p> <p>5 We learned that just by seeing bridges break.</p> <p>6 Because even though as a single unit this</p> <p>7 behaves better than a PFM when you get a bridge because</p> <p>8 it's still in all-ceramic, if you violate the Rule of 27</p> <p>9 with a BruxZir bridge, it typically with break; if you</p> <p>10 violate the Rule of 27 with a PFM bridge, it typically</p> <p>11 won't. Porcelain may chip off, but the metal won't</p> <p>12 break underneath it.</p> <p>13 And so the Rule of 27 dictates that sometimes</p> <p>14 you have a wider connector in between those two teeth.</p> <p>15 And so it'll get designed that way in the CAD/CAM</p> <p>16 software, it'll get milled that way, and then when the</p> <p>17 technician sees it, they look at it and they go, "That's</p> <p>18 ugly. I don't want this. This looks like one big tooth</p> <p>19 shaped like the number 8."</p> <p>20 And so they'll go in to define those grooves</p> <p>21 like a natural tooth would have, thereby violating the</p> <p>22 Rule of 27. And then they send it out to a dentist, and</p> <p style="text-align: right;">Page 136</p>
<p>1 make them right now.</p> <p>2 So "full-contour" means it's got all the</p> <p>3 chewing anatomy and everything on it in its final shape.</p> <p>4 Q. Just like the tooth that's shown here on this</p> <p>5 page --</p> <p>6 A. Yes.</p> <p>7 Q. -- with all the crenulations?</p> <p>8 Now, it makes reference here to a fractured</p> <p>9 BruxZir bridge, and it says that it tends to be due to a</p> <p>10 diamond disc being used to separate connectors or</p> <p>11 violation of the "Rule of 27."</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. What is the Rule of 27?</p> <p>15 A. The Rule of 27 is when you have a bridge --</p> <p>16 let's say you have a missing tooth in the middle of</p> <p>17 three teeth. A bridge is going to be a restoration that</p> <p>18 connects to each of these tooth [sic] and has a fake one</p> <p>19 in the middle, and they're all going to be connected</p> <p>20 together. So you're going to involve three teeth to</p> <p>21 replace one tooth.</p> <p>22 So this is an abutment tooth that sits on it --</p> <p style="text-align: right;">Page 135</p>	<p>1 the dentist goes, "I thought this stuff was strong. It</p> <p>2 broke."</p> <p>3 Q. Okay.</p> <p>4 A. We learned that the hard way, and then we</p> <p>5 passed that information on to the laboratories.</p> <p>6 Q. I see.</p> <p>7 Do you understand what the issue is with the</p> <p>8 diamond disc being used? What is the problem?</p> <p>9 A. It's talking about the same thing. It's almost</p> <p>10 the same point, but it's using that diamond disc to</p> <p>11 separate the connectors to open it up for esthetic</p> <p>12 purposes to make it look more like real teeth.</p> <p>13 Real teeth have these embrasures, these spaces</p> <p>14 between them, and bridges that don't have that, it just</p> <p>15 looks like a big chunk of enamel on the front. So they</p> <p>16 would go in with a diamond disc and try to open that,</p> <p>17 and when you do that, what you do is violate the</p> <p>18 Rule of 27.</p> <p>19 So it's really kind of the same point. It's</p> <p>20 not two separate things really.</p> <p>21 Q. I see. I see.</p> <p>22 Are you with your clinical practice involved in</p> <p style="text-align: right;">Page 137</p>

Pages 134 to 137

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 troubleshooting some of these things?</p> <p>2 I mean, if there is a problem, for example, one</p> <p>3 that was identified here, does that come back to you to</p> <p>4 be part of the solution?</p> <p>5 A. Only if it's something that we've observed</p> <p>6 happen on one of the patients. It's difficult in good</p> <p>7 conscience to take a bridge where the Rule of 27 has</p> <p>8 been violated, prep somebody's teeth, put it in their</p> <p>9 mouth and say, "Try to break it." That gets done</p> <p>10 downstairs. That's usually done in R&D on the testing</p> <p>11 machines, where they will violate that rule and start</p> <p>12 breaking it and see if it breaks at different points.</p> <p>13 But if I had a bridge break, certainly I'll try</p> <p>14 to cut it off and send it down to R&D so they can look</p> <p>15 at it underneath the scope and we can figure out what</p> <p>16 happened.</p> <p>17 Q. So, in other words, as part of your practice,</p> <p>18 to the extent things fail, the information will get</p> <p>19 incorporated into the R&D; if it's happening in the</p> <p>20 outside world, the R&D people would deal with it, but</p> <p>21 there's no reason for you to?</p> <p>22 A. That's correct, yeah. Or -- because usually</p> <p style="text-align: right;">Page 138</p>	<p>1 They're even dated the same, so I'm not sure why</p> <p>2 they're --</p> <p>3 A. Okay.</p> <p>4 Q. Since I'm just looking here at Exhibit 36, let</p> <p>5 me ask you the question. I see there's a</p> <p>6 Bradley Bockhorst listed as a dentist.</p> <p>7 A. Correct.</p> <p>8 Q. And he's under Greg Minzenmayer's group. Do</p> <p>9 you see that?</p> <p>10 A. Correct.</p> <p>11 Q. What is his role within Glidewell?</p> <p>12 A. Well, he's no longer with the company, but it</p> <p>13 was to be the dentist in charge of the implant division.</p> <p>14 So he was in a different building than we were, and</p> <p>15 we've now produced a line of implants, and he was</p> <p>16 providing the kind of education that I do, but for</p> <p>17 implants.</p> <p>18 Q. Why does that put him in a completely different</p> <p>19 part of the org chart than you?</p> <p>20 A. Because Greg Minzenmayer came from the implant</p> <p>21 world, and when he became COO, he oversees most of the</p> <p>22 stuff that goes on over at the implant department. So</p> <p style="text-align: right;">Page 140</p>
<p>1 it's the outside authorized laboratories calling in with</p> <p>2 the issues.</p> <p>3 Q. And, again, if they do call in, it's going to</p> <p>4 be somebody in the R&D group who deals with it; correct?</p> <p>5 A. It's going to be somebody in Glidewell Direct.</p> <p>6 You'll notice that the lab ones should say -- oh, I</p> <p>7 guess BruxZir hadn't been moved into Glidewell Direct</p> <p>8 yet, but I did see one that -- Glidewell Direct is the</p> <p>9 branch that now sells the blanks, sells the mills and</p> <p>10 deals with the laboratory and the couple of products</p> <p>11 that we sell to dentists that aren't crowns.</p> <p>12 I saw it somewhere. I saw the mark on here.</p> <p>13 But that's usually the department that deals with the</p> <p>14 laboratories; that would take those calls.</p> <p>15 Q. In Exhibit 36, the org chart, who is</p> <p>16 responsible for Glidewell Direct?</p> <p>17 Is it going to be Robin Carden's department?</p> <p>18 A. No. No, it's a different Robin, Robin Bartolo.</p> <p>19 What's the difference between these two pages?</p> <p>20 It says "1 of 2" and "2 of 2." Are they</p> <p>21 identical?</p> <p>22 Q. I don't know. They look identical to me.</p> <p style="text-align: right;">Page 139</p>	<p>1 he wanted to have direct connection with Brad about what</p> <p>2 they were doing over there in terms of their clinical</p> <p>3 projects.</p> <p>4 Q. And do you have an understanding of when</p> <p>5 Mr. Bockhorst left Glidewell?</p> <p>6 A. Two months ago perhaps.</p> <p>7 Q. Do you know where he is today?</p> <p>8 A. I believe he left to work for an implant</p> <p>9 company in San Diego.</p> <p>10 Q. Referring back to page 8 -- we're still on</p> <p>11 page 8.</p> <p>12 A. Okay.</p> <p>13 Q. Certainly in these e-mail blasts, one of the</p> <p>14 themes of Glidewell's communications is about the</p> <p>15 strength of their BruxZir crowns. You'd agree with</p> <p>16 that?</p> <p>17 A. "More Brawn than Beauty," correct.</p> <p>18 Q. Sometimes they have some pretty creative ways</p> <p>19 of explaining it, and at the bottom of page 8, right</p> <p>20 below where it says, "Click here to learn why discs</p> <p>21 should not be used to finish full-contour zirconia</p> <p>22 restorations," it says, "Following the processes</p> <p style="text-align: right;">Page 141</p>

Pages 138 to 141

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 outlined will ensure that your BruxZir crowns and</p> <p>2 bridges continue to live up to their reputation of being</p> <p>3 virtually 'bulletproof.'"</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. And so, again, that's another reference to how</p> <p>7 strong these things are, and perhaps here they wanted to</p> <p>8 put a little emphasis on that point since the whole</p> <p>9 point of the technical update is about a product that's</p> <p>10 breaking. So they're saying, "Hey, it's not the</p> <p>11 strength. It's because it's being used improperly"; is</p> <p>12 that fair?</p> <p>13 A. That's fair.</p> <p>14 Q. Okay. So turning to the next page, page 9,</p> <p>15 this is a page that I believe you said is going to be</p> <p>16 directed to dentists as opposed to the labs; correct?</p> <p>17 A. Correct.</p> <p>18 Q. And this one includes a listing of clinical</p> <p>19 indications for BruxZir with three bullet point entries.</p> <p>20 Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. The first entry says, "Bruxers and grinders who</p> <p style="text-align: right;">Page 142</p>	<p>1 certainly one of the prominent patient populations that</p> <p>2 Glidewell wants dentists to be thinking about when</p> <p>3 they're considering its product; isn't that fair?</p> <p>4 A. Yes, that's one of the patient populations.</p> <p>5 Q. And, in fact, it was probably the initial</p> <p>6 motivation when you had the "More Brawn than Beauty"</p> <p>7 idea at the inception in 2009?</p> <p>8 A. Correct. It played well into the story when</p> <p>9 the crown was so ugly you had to hide it in the back of</p> <p>10 the mouth.</p> <p>11 Q. Let me have you turn up to page 12 of</p> <p>12 Exhibit 8. I just want to point out this is another one</p> <p>13 that's going to the dentists, I believe. This one makes</p> <p>14 a reference to you as well if you look there. It says</p> <p>15 that "Dr. Michael DiTolla shares two anterior crown</p> <p>16 cases and a BruxZir roundhouse bridge case."</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. And then I think there's probably a link they</p> <p>20 can click to see the video; right?</p> <p>21 A. Looks like it.</p> <p>22 Q. Now, in this instance, the anterior crown</p> <p style="text-align: right;">Page 144</p>
<p>1 have destroyed other restorations"; right?</p> <p>2 A. Correct.</p> <p>3 Q. The second one is, "An esthetic alternative to</p> <p>4 posterior PFMs with metal occlusal and full-cast</p> <p>5 crowns."</p> <p>6 A. Correct.</p> <p>7 Q. And the third one is, "Ideal for implant cases</p> <p>8 because of its milled precision of fit and chip-proof</p> <p>9 durability." Do you see that?</p> <p>10 A. Correct.</p> <p>11 Q. So, again, this is consistent with, you know,</p> <p>12 bruxers being a prominent target audience of these</p> <p>13 crowns when they're thought of for use by dentists; is</p> <p>14 that fair?</p> <p>15 A. I don't know if it's more prominent than other</p> <p>16 indications, but it is an indication.</p> <p>17 Q. I mean, it's the first one listed here at</p> <p>18 least.</p> <p>19 A. It is the first one listed there. I don't know</p> <p>20 if that was intentional or not.</p> <p>21 Q. I mean, you would agree that Glidewell makes</p> <p>22 the application with bruxers as a -- you know, that's</p> <p style="text-align: right;">Page 143</p>	<p>1 cases, these are not back teeth; correct? These are</p> <p>2 front teeth?</p> <p>3 A. Correct.</p> <p>4 Q. And this e-mail blast looks like it's from 2011</p> <p>5 or thereabouts. So in 2011 certainly Glidewell is</p> <p>6 starting to move into -- at least by then moving into</p> <p>7 trying to get the product -- expanding it beyond just</p> <p>8 the back teeth; is that fair?</p> <p>9 A. It's a fair assessment, but it was really done</p> <p>10 by the dentists and not by us. We were the ones seeing</p> <p>11 them starting to prescribe it in the front of the mouth</p> <p>12 and were like, "What are they doing?" So we started</p> <p>13 working on it and said, "Okay. We've got to step this</p> <p>14 up. This is going to be used in more places," and now</p> <p>15 it's become -- yeah, it's pretty much used everywhere at</p> <p>16 this point.</p> <p>17 Q. If you turn to page 13, I think this is another</p> <p>18 page you said was directed at dentists, and I see a</p> <p>19 reference to a Dr. Gordon Christensen on BruxZir. Do</p> <p>20 you see that?</p> <p>21 A. I do.</p> <p>22 Q. Who is Dr. Gordon Christensen?</p> <p style="text-align: right;">Page 145</p>

Pages 142 to 145

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 A. He is perhaps the best known dental clinician</p> <p>2 and researcher in the country and has been doing</p> <p>3 research up in Provo, Utah, at CRA, his Clinical</p> <p>4 Research Associates, for 35 or 40 years. He's a</p> <p>5 prosthodontist who got involved with this years ago, and</p> <p>6 he also makes DVDs like we do, but he charges for them.</p> <p>7 He's a very well-trusted name with dentists.</p> <p>8 He's got a monthly column in our ADA journal, our</p> <p>9 national journal, and then he writes for some other</p> <p>10 magazines as well.</p> <p>11 Q. This morning you made a reference to studies</p> <p>12 being done in Utah. Are they studies being done by his</p> <p>13 lab?</p> <p>14 A. That's correct.</p> <p>15 Q. Do you know Dr. Christensen personally?</p> <p>16 A. I have met him a couple times, yes.</p> <p>17 Q. Okay. I'll have you turn forward to page 16 of</p> <p>18 Exhibit 8.</p> <p>19 A. Okay.</p> <p>20 Q. This page is a little different than the other</p> <p>21 ones in that it looks like it's talking about a BruxZir</p> <p>22 Milling System. Do you see that?</p> <p style="text-align: right;">Page 146</p>	<p>1 one says it's a technical update video now available.</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. This one, similar to the last thing, looks like</p> <p>5 it's getting at various kinds of equipment that can be</p> <p>6 provided, including -- well, the video anyway provides</p> <p>7 instructions for things like digitally scanning models,</p> <p>8 designing contacts and occlusion, designing bridges,</p> <p>9 milling and spruing BruxZir blocks and recovering milled</p> <p>10 units.</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. This is really getting into the fabrication</p> <p>14 side of the actual finished crowns; is that right?</p> <p>15 A. That's correct.</p> <p>16 Q. And, again, I think Robin Carden would be</p> <p>17 somebody who could speak to those issues; is that --</p> <p>18 A. Definitely. That's a good example of a video</p> <p>19 that I had nothing to do with and have never seen.</p> <p>20 Q. Does Mr. Carden get to put himself in videos,</p> <p>21 or...</p> <p>22 A. He's not quite as camera-ready as I am. He has</p> <p style="text-align: right;">Page 148</p>
<p>1 A. I do.</p> <p>2 Q. You'll recall this morning we were talking</p> <p>3 about how the BruxZir name has been used on other</p> <p>4 products in addition to the crowns and in addition to</p> <p>5 the milling material. This is an example of that;</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 Q. And for just \$54,995 you can get a complete</p> <p>9 set, it looks like, and all you need is a scanner and a</p> <p>10 centering oven; right?</p> <p>11 A. Right. But I can get you a discount.</p> <p>12 Q. And you can get me a discount. Oh, I'll have</p> <p>13 to think about that.</p> <p>14 And, again, I think you testified earlier, you</p> <p>15 don't really have personal knowledge about what's going</p> <p>16 on with these products; is that correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Who at Glidewell would be aware of these</p> <p>19 products? Would it be Robin Carden?</p> <p>20 A. Absolutely.</p> <p>21 Q. If you turn to page 17, you see another e-mail</p> <p>22 blast I believe is directed at the laboratories. This</p> <p style="text-align: right;">Page 147</p>	<p>1 a face for R&D.</p> <p>2 MR. TACHNER: They'd need a panoramic screen.</p> <p>3 THE WITNESS: You'll see when he comes in.</p> <p>4 BY MR. JANKOWSKI:</p> <p>5 Q. Okay. So if you'd turn to the next page,</p> <p>6 page 18 of Exhibit 8, it's an e-mail blast to the</p> <p>7 laboratories about recycling the solid zirconia.</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. So it looks like this is a situation where</p> <p>11 Glidewell will be paying the labs some money if they</p> <p>12 send back the remains of the solid zirconia that's left</p> <p>13 over after they've made the crowns; correct?</p> <p>14 A. That is correct.</p> <p>15 Q. And then I assume Glidewell can take it and</p> <p>16 reuse it and repackage it and make new milling materials</p> <p>17 probably. Is that your understanding?</p> <p>18 A. My understanding is that we're collecting it</p> <p>19 but not necessarily doing that just yet.</p> <p>20 Q. Okay.</p> <p>21 A. I'm not sure if we've really figured out</p> <p>22 exactly -- I think we think we're close, but we haven't</p> <p style="text-align: right;">Page 149</p>

Pages 146 to 149

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 really got a handle on exactly how to do it.
2 Q. And then turning to page 19 --
3 A. And, again, that's Robin. He would know all
4 about it.
5 Q. Robin would know, right.
6 And page 19 is another one I think Robin would
7 be speaking to, and in this situation we have a FastFire
8 furnace available for \$6,900 as well.
9 Again this is another area where Robin would
10 know; correct?
11 A. Correct. And it does have the word "BruxZir"
12 in front of it. I told you I wasn't sure if it did or
13 not, but it does.
14 Q. It looks like it. So even the furnace has
15 "BruxZir" associated with it?
16 A. Correct.
17 Q. Then page 20 I think we already spoke about.
18 To me it looks like a duplicate of page 2 of the
19 document. It's the dentists again, and it's got the
20 "More Brawn and Improving Beauty," and I think it's --
21 it looks to be the same e-mail blast.
22 A. I agree.

Page 150

1 MR. JANKOWSKI: So, Dr. DiTolla. I'm going to
2 put in front of you a document that was previously
3 marked as Exhibit 9. This is a shorter document, but if
4 you could just take a look at it. It's just two pages.
5 (Whereupon, Exhibit 9 was marked
6 for identification.)
7 THE WITNESS: Okay.
8 BY MR. JANKOWSKI:
9 Q. Do you recognize Exhibit 9?
10 A. I recognize the images on both pages, but I've
11 seen them used in a print ad, and I'm not sure if this
12 is -- I don't recognize where this was used, if it's --
13 it looks like it's -- oh, well, it says "E-mail ADA."
14 I haven't seen this particular e-mail blast,
15 which it says down at the bottom apparently, but I have
16 seen all these images used before in print ads.
17 Q. Who would be the intended audience for this
18 kind of e-mail blast?
19 A. It would be dentists if -- what it says down
20 here at the bottom says "E-mail Blast: ADA News," so
21 that would be going to dentists.
22 Q. What's your understanding of -- you know,

Page 151

1 what's the purpose of sending out this e-mail blast?
2 What's the message Glidewell is trying to present?
3 A. Well, that BruxZir zirconia's 50 percent
4 smaller average grain size improves its physical
5 properties and that they're warmer, more natural-looking
6 restorations.
7 Q. When it says "improves its physical
8 properties," that's again a reference to strength;
9 wouldn't you agree?
10 A. Yes.
11 Q. First page of Exhibit 9 there's a reference to
12 the processing of the zirconia being patented.
13 Do you see that?
14 A. Yes.
15 Q. I think I asked you this earlier, but do you
16 know whether there's an issued patent on that process?
17 A. Well, the thing that you showed me before said
18 "patent pending," and I told you that I thought it had
19 gone through and was now patented. And since this is
20 from this year and that other one was from a year and
21 a half ago and it now no longer says "patent pending,"
22 it says "patented," I'm assuming that it did in fact go

Page 152

1 through.
2 Q. And when you say you're assuming, you're not
3 sure one way or the other?
4 A. No. I don't get involved with regulatory
5 meetings and R&D and things like that. That would just
6 be from talk I overhear at lunch.
7 Q. Do you have an understanding for what the scope
8 of the patent is that Glidewell is seeking?
9 A. Yes.
10 Q. What's your understanding of that scope?
11 A. That it relates strictly to the way we treat
12 the zirconia after we get it from our supplier to make
13 it into those pucks. It's the way we make it into those
14 pucks that is different from what other companies are
15 doing.
16 Q. So Glidewell doesn't have a patent on an
17 all-zirconia dental crown, for example?
18 A. No.
19 MR. JANKOWSKI: Dr. DiTolla, I'm going to show
20 you next a document that was marked as Exhibit 12
21 previously, and this is a multipage document produced by
22 Glidewell. The front page says "Authorized Laboratories

Page 153

Pages 150 to 153

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 Program Benefits," and it has the name Jim Shuck,
2 Vice President, Sales and Marketing.
3 (Whereupon, Exhibit 12 was marked
4 for identification.)
5 BY MR. JANKOWSKI:
6 Q. This is kind of a long document. I really
7 don't want to spend much time on it.
8 A. Okay.
9 Q. I'm not really going to go through it in any
10 detail. I'm just curious if you have seen -- this looks
11 like a PowerPoint presentation perhaps that Mr. Shuck
12 gave, and I think from his testimony, this is associated
13 with a -- as it says on the front page, a BruxZir
14 laboratory summit from January 2012.
15 Do you see that?
16 A. I do.
17 Q. Are you familiar with that summit?
18 A. I am.
19 Q. Did you participate in that summit?
20 A. I did.
21 Q. Did you attend the presentation that Mr. Shuck
22 gave where these were used as slides?
Page 154

1 A. No. I gave my presentation and had to run out
2 to catch a flight at John Wayne.
3 Q. That was actually my next question, which was,
4 did you give a presentation --
5 A. I did.
6 Q. -- at the summit?
7 So you had some sort of PowerPoint which is,
8 you know, along the lines of what Mr. Shuck has put
9 together on his subject matter?
10 A. Yeah, it's talking about it from the point of
11 view of a dentist, not a laboratory.
12 Q. Who attends the summit? These are
13 representatives of the authorized laboratories?
14 A. Correct.
15 Q. And where did this summit take place?
16 A. At one of our other buildings just about a mile
17 from the main building.
18 Q. So here in Orange County?
19 A. Yes.
20 Q. What was the title of your talk, do you recall?
21 A. Might have been "BruxZir: A Dentist's
22 Perspective" or something like that. Probably something
Page 155

1 like that.
2 Q. Do you recall how many people attended your
3 presentation?
4 A. 20? I think there was about 20 people in the
5 room.
6 Q. Do you still have a copy of whatever slides or
7 material that you used with that --
8 A. I do. It's on my computer.
9 MR. JANKOWSKI: Mr. Tachner, I'd like to have a
10 copy of Dr. DiTolla's presentation produced from the
11 January 2012 summit, please.
12 MR. TACHNER: Yes.
13 MR. JANKOWSKI: And you know what, I should
14 have mentioned this before lunch, but also a copy of
15 Mr. DiTolla's e-mail that we were talking about this
16 morning.
17 THE WITNESS: Okay.
18 MR. JANKOWSKI: You had it on your phone. I
19 don't think you want to produce your phone --
20 THE WITNESS: No.
21 MR. JANKOWSKI: -- so we'll take a hard copy.
22 MR. TACHNER: We will produce that.
Page 156

1 MR. JANKOWSKI: Dr. DiTolla, next I'm going to
2 hand you a document that was previously marked as
3 Exhibit 13.
4 THE WITNESS: Okay.
5 MR. JANKOWSKI: This is a document produced by
6 Glidewell, about eight or nine pages, and it appears to
7 be a printout from a website.
8 (Whereupon, Exhibit 13 was marked
9 for identification.)
10 BY MR. JANKOWSKI:
11 Q. If you could just briefly look at Exhibit 13.
12 A. Okay.
13 Q. Do you recognize the content of Exhibit 13?
14 A. I'm not in charge of the BruxZir blog, but
15 they've had me write things for it before and give them
16 pictures. So I don't spend any time on this blog, but I
17 see there is a video of me and some testimonials.
18 Q. Is this an example where Michael Cash would be
19 asking you for material sometimes? Would he be working
20 on the blog?
21 A. He might be, or the guy right underneath him
22 who's in charge of the website, Kevin, would probably
Page 157

Pages 154 to 157

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 ask Mike or ask me directly for some pictures. Or if a</p> <p>2 dentist had written in with a question, he would ask me</p> <p>3 to write the answer.</p> <p>4 Q. What's your understanding of who the intended</p> <p>5 audience is of the blog? Is this for dentists? For</p> <p>6 labs? For both?</p> <p>7 A. I'd say both.</p> <p>8 Q. If you look at the second page of Exhibit 13,</p> <p>9 you'll see that again right at the front center -- top</p> <p>10 center, I should say, there's the "More Brawn and</p> <p>11 Improving Beauty"; right?</p> <p>12 A. Correct.</p> <p>13 Q. And there's that same quote about, "When</p> <p>14 Glidewell launched BruxZir Solid Zirconia crowns and</p> <p>15 bridges in 2009, the intention was to provide a</p> <p>16 monolithic zirconia restoration indicated for bruxers</p> <p>17 and grinders," and we read that earlier into the record.</p> <p>18 A. Right.</p> <p>19 Q. I also see -- actually, this is a really nice,</p> <p>20 compact presentation of a lot of the things we've been</p> <p>21 talking about. I see at the lower left</p> <p>22 Dr. Gordon Christensen is listed, and that's probably a</p> <p style="text-align: right;">Page 158</p>	<p>1 Q. Okay. So dentists will send in their own</p> <p>2 photos for use with this blog?</p> <p>3 A. From time to time it happens. More of the time</p> <p>4 they're sending it in just to let the technician who</p> <p>5 made the crown know, "Hey, you did a great job. It</p> <p>6 really matched well. Thank you."</p> <p>7 Q. And this whole page, it looks like, is devoted</p> <p>8 to BruxZir testimonials, which is a solicitation, I take</p> <p>9 it, of people's experiences use the BruxZir product; is</p> <p>10 that fair?</p> <p>11 A. Yes, it appears to be fair. I honestly didn't</p> <p>12 know that was on there, but yeah, that's exactly what</p> <p>13 that looks like.</p> <p>14 Q. There also appears to be a video on there that</p> <p>15 says "BruxZir Solid Zirconia Introduction" with one of</p> <p>16 your videos at the upper right; correct?</p> <p>17 A. Correct.</p> <p>18 Q. Whoever chose to make the exhibit just chose to</p> <p>19 capture you at a point when your eyes are closed and</p> <p>20 you're not looking your best. I don't know who did</p> <p>21 that.</p> <p>22 A. Awesome. Thank you so much.</p> <p style="text-align: right;">Page 160</p>
<p>1 clickable link that you could get to more information on</p> <p>2 his research. Is that your understanding as well?</p> <p>3 A. My understanding would be that he probably</p> <p>4 wrote about -- that wouldn't be so much on his research</p> <p>5 as it would be just his opinion on these solid zirconia</p> <p>6 crowns and where they're going.</p> <p>7 Q. Okay.</p> <p>8 A. And e.max kind of thing. All the monolithic</p> <p>9 crowns. I think that was an article he wrote.</p> <p>10 Q. Okay. Right, right.</p> <p>11 Along the lower left side, all these recent</p> <p>12 posts, these are going to be ways of clicking and</p> <p>13 accessing information on these various subjects; right?</p> <p>14 A. Yes.</p> <p>15 Q. If you turn to the next page, you'll see now</p> <p>16 there's a page where there are some pictures at the</p> <p>17 bottom. Those would have been pictures you would have</p> <p>18 been providing for the blog?</p> <p>19 A. Actually, those two are from the dentist right</p> <p>20 above that --</p> <p>21 Q. Oh, right, there's the quote.</p> <p>22 A. -- in the testimonial section, yeah.</p> <p style="text-align: right;">Page 159</p>	<p>1 Q. Because you're very photogenic.</p> <p>2 A. Someone's whose crown must still be sensitive.</p> <p>3 Q. It's similar to the driver's license pictures</p> <p>4 at the DMV.</p> <p>5 A. Exactly.</p> <p>6 Q. They're magical in their ability to capture the</p> <p>7 wrong moment.</p> <p>8 If you turn to the next page, it looks like</p> <p>9 it's an entire page devoted to scientific validation.</p> <p>10 This would be an exam of the studies that we've been</p> <p>11 talking about since this morning, wear studies in Utah</p> <p>12 and Germany and so on; is that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And, in fact, the top one has a description</p> <p>15 there where -- I think you eluded to this earlier --</p> <p>16 where the concern of the wear wasn't even on the BruxZir</p> <p>17 crown, but rather on, say, a natural tooth which is</p> <p>18 adjacent to that crown; is that accurate?</p> <p>19 A. Well, it's opposing it. It's not adjacent to</p> <p>20 it.</p> <p>21 Q. Oh.</p> <p>22 A. And the BruxZir did cause some wear facets on</p> <p style="text-align: right;">Page 161</p>

Pages 158 to 161

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 the opposing tooth, but that the tooth -- they both wore</p> <p>2 each other.</p> <p>3 Q. Right, right.</p> <p>4 In other words, one issue of the zirconia</p> <p>5 monolithic crowns is that they're so strong, some people</p> <p>6 might have a concern that they're going to cause</p> <p>7 problems to the tooth opposing it?</p> <p>8 A. That's correct.</p> <p>9 Q. And this is a study that says no, that doesn't</p> <p>10 seem to be a problem?</p> <p>11 A. That's correct. Because wear of an opposing</p> <p>12 tooth has to do with how rough the surface is, not how</p> <p>13 hard it is.</p> <p>14 Q. So as long as the zirconia crown is smooth</p> <p>15 enough, you're going to have an acceptable --</p> <p>16 A. Right.</p> <p>17 Q. -- amount of wear?</p> <p>18 A. And if you take something flexible like a</p> <p>19 coarse sandpaper, even though it's flexible, and rub it</p> <p>20 against a tooth, it will wear on it even though it's not</p> <p>21 hard.</p> <p>22 Q. The second entry down shows a comparative wear</p> <p style="text-align: right;">Page 162</p>	<p>1 Q. Okay. If we turn to the next page of the blog,</p> <p>2 I see a before and after case gallery. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Now, are these pictures your handiwork?</p> <p>5 A. Yes, they are. That's what BruxZir looked like</p> <p>6 in 2009.</p> <p>7 Q. Do you just recognize it as a photo from 2009?</p> <p>8 A. No, I just recognize these are not pretty</p> <p>9 tooth, those two crowns.</p> <p>10 Q. And this is an example of photographs that</p> <p>11 would have been taken in your office when you're doing</p> <p>12 your clinical studies at Glidewell's facility; correct?</p> <p>13 A. Correct.</p> <p>14 Q. How are pictures like this taken?</p> <p>15 I mean, this probably isn't easy to get these;</p> <p>16 right? I mean --</p> <p>17 A. We have a long mirror, and the patient opens,</p> <p>18 and you put it against the lower teeth to get the upper</p> <p>19 teeth. And then she blows air on it to keep it from</p> <p>20 fogging since the patient probably can't hold their</p> <p>21 breath for 30 seconds. Then you take a camera with a</p> <p>22 100-millimeter macro lens and get in as close as you</p> <p style="text-align: right;">Page 164</p>
<p>1 study between BruxZir and Ceramco, and I think we spoke</p> <p>2 about that earlier; correct?</p> <p>3 A. Yes.</p> <p>4 Q. And then the third entry down is an enamel wear</p> <p>5 test comparing it to IPS e.max, which we were speaking</p> <p>6 about this morning as well; correct?</p> <p>7 A. Correct.</p> <p>8 Q. In this particular study it says that "glazed</p> <p>9 BruxZir was found to wear compatible with enamel and</p> <p>10 virtually identical to glazed IPS e.max."</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. And that's consistent with your understanding?</p> <p>14 A. It is. And with what I recently saw</p> <p>15 Rella Christensen present in Las Vegas.</p> <p>16 Q. Is he the person who did that study?</p> <p>17 A. Well, Rella is Gordon's wife in Utah, and</p> <p>18 they're the ones who are working with those 20 other</p> <p>19 clinicians across the U.S.</p> <p>20 This appears to be Dr. Burgess from University</p> <p>21 of Alabama who presented that at a meeting in</p> <p>22 Washington, DC.</p> <p style="text-align: right;">Page 163</p>	<p>1 can.</p> <p>2 It's a process. It's why they're free -- part</p> <p>3 of why they're free.</p> <p>4 Q. Who actually snaps the photo? Is it the</p> <p>5 videographer or --</p> <p>6 A. It's usually me or my assistant. She's gotten</p> <p>7 so good, she can do it by herself now.</p> <p>8 Q. And turning the page to the next page of the</p> <p>9 blog, there's a reference to a video gallery.</p> <p>10 The videos here would be videos that you put</p> <p>11 together for Glidewell; is that correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay.</p> <p>14 A. Do you notice how good those crowns look,</p> <p>15 though, on that page? See on the before those two</p> <p>16 front ones and then on the after compared to what we</p> <p>17 just looked at, those two in the back.</p> <p>18 Q. Uh-huh.</p> <p>19 And turning to the next page of the blog,</p> <p>20 there's a -- it looks like more of the same actually.</p> <p>21 A. Yes.</p> <p>22 Q. More of your videos; correct?</p> <p style="text-align: right;">Page 165</p>

Pages 162 to 165

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 A. Yes.</p> <p>2 Q. Then turn the page again, it looks like more of</p> <p>3 your videos.</p> <p>4 A. Yes.</p> <p>5 Q. Okay.</p> <p>6 A. It actually seems to be the same videos listed</p> <p>7 on each page with just a different still shown in that</p> <p>8 right-hand side maybe. Just so you don't think there's</p> <p>9 21 videos on there; there's 7.</p> <p>10 In the Google search window it says "Play-Doh</p> <p>11 Shape & Spin Elmo," so we know they were surfing the</p> <p>12 Internet doing some personal shopping in between</p> <p>13 printing the pages.</p> <p>14 MR. JANKOWSKI: Dr. DiTolla, I'm going to hand</p> <p>15 to you next a document that was previously marked as</p> <p>16 Exhibit 15.</p> <p>17 THE WITNESS: Okay.</p> <p>18 MR. JANKOWSKI: This is a, looks like, six-page</p> <p>19 document. It looks like a Glidewell brochure. This was</p> <p>20 produced by Glidewell in this case.</p> <p>21 (Whereupon, Exhibit 15 was marked</p> <p>22 for identification.)</p> <p style="text-align: right;">Page 166</p>	<p>1 Q. On the first page at the upper right it says</p> <p>2 "Virtually Unbreakable Crowns and Bridges."</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. I love -- there's one reference in here. If</p> <p>6 you turn to the very last page of the brochure, you'll</p> <p>7 see the whole page is devoted to high-strength crown</p> <p>8 options. Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. And the first line says, "BruxZir Solid</p> <p>11 Zirconia is made from biocompatible, virtually</p> <p>12 unbreakable medical-grade zirconia, the same element</p> <p>13 used to reinforce bulletproof military armor."</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. It's a great reference to convey the strength</p> <p>17 of the material. Do you know who came up with that?</p> <p>18 A. I don't. I vaguely remember voting against it,</p> <p>19 but...</p> <p>20 Q. Okay.</p> <p>21 A. It sounds like -- that sentence is a little</p> <p>22 full of itself, but -- I do not know, but it's safe to</p> <p style="text-align: right;">Page 168</p>
<p>1 BY MR. JANKOWSKI:</p> <p>2 Q. If you can just briefly look at Exhibit 15,</p> <p>3 please.</p> <p>4 A. Okay.</p> <p>5 Q. Have you seen Exhibit 15 before?</p> <p>6 A. I haven't. These look like pieces that would</p> <p>7 be sent directly from the fulfillment department to</p> <p>8 doctors. I don't have a lot to do with these.</p> <p>9 Q. So the intended audience of this is going to be</p> <p>10 dentists?</p> <p>11 A. Definitely.</p> <p>12 Q. When you said "fulfillment department," what do</p> <p>13 you mean by that?</p> <p>14 A. We have a department that when dentists want</p> <p>15 more information on a product or want some of the DVDs</p> <p>16 that we produce, there's a department that exists just</p> <p>17 to send information out like that to dentists.</p> <p>18 Q. And this brochure is consistent with what we've</p> <p>19 been talking about, that a selling point of the BruxZir</p> <p>20 product, the solid zirconia crowns and bridges, is their</p> <p>21 strength; wouldn't you agree?</p> <p>22 A. That's correct.</p> <p style="text-align: right;">Page 167</p>	<p>1 say a combination of Jim Shuck and Mike Cash, who pretty</p> <p>2 much write all of these ad pieces.</p> <p>3 Q. It sounds like they do ask for your input, on</p> <p>4 some of these anyway; is that correct?</p> <p>5 A. They do, yeah, if they -- again, as the focus</p> <p>6 group of one, I'm supposed to predict how all the</p> <p>7 dentists in America are going to react to something like</p> <p>8 that. And as a dentist I sit there and read it, and I'm</p> <p>9 like, "Oh, please. Bulletproof military?" It might be</p> <p>10 true, but it just seems like -- there's nothing we've</p> <p>11 ever seen in dentistry besides this that you can put in</p> <p>12 a mouth and that never breaks, because that never</p> <p>13 breaks. So it's like, "Yeah, yeah, yeah, tell us</p> <p>14 again."</p> <p>15 Probably Jim and Mike came up with it.</p> <p>16 Q. And the "Choose your preference" there, correct</p> <p>17 me if I'm wrong, but I think, you know, putting the</p> <p>18 BruxZir product there next to the gold crown, next to</p> <p>19 the metal crown, the unstated message is that your</p> <p>20 patients are going to want the solid zirconia crown</p> <p>21 because it looks like a tooth; is that fair?</p> <p>22 A. That's correct.</p> <p style="text-align: right;">Page 169</p>

Pages 166 to 169

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 Q. In other words, these are all options, and
2 they're all from a functionality perspective good
3 options. But once you take the esthetics into account,
4 it's kind of no contest. You should be choosing the
5 BruxZir; is that fair?
6 A. Well, it's a choice. No, you should be
7 choosing the gold, but your patients not going to let
8 you do it. They insist on tooth color. That's the
9 next -- second choice. BruxZir's the second choice.
10 There's no doubt about it that gold's the best.
11 Q. On functionality, but not esthetics?
12 A. On functionality. On esthetics, yeah, gold
13 loses big time.
14 Q. Right. That was kind of the point of my
15 question: When you take esthetics into account, BruxZir
16 wins hands down.
17 A. Oh, yeah, definitely.
18 MR. JANKOWSKI: Okay. This is a good time to
19 take a break.
20 MR. TACHNER: I was just going to suggest that.
21 THE VIDEOGRAPHER: Off the record at 2:23 p.m.
22 (Recess taken.)
Page 170

1 THE VIDEOGRAPHER: We are on the record at
2 2:45 p.m. This is the beginning of Tape 3.
3 MR. JANKOWSKI: Dr. DiTolla, I'm going to hand
4 you a document that was marked previously at Exhibit 19.
5 THE WITNESS: Okay.
6 MR. JANKOWSKI: This looks like an assemblage
7 of press releases from Glidewell, or at least they've
8 got the label "PRWeb" on top of them.
9 (Whereupon, Exhibit 19 was marked
10 for identification.)
11 BY MR. JANKOWSKI:
12 Q. I'll have you briefly look at that. You don't
13 need to study it in detail.
14 A. Okay.
15 Q. Just briefly familiarize yourself with the
16 contents.
17 While you're looking at it, let me just ask you
18 the question: Do you recognize this thing called PRWeb?
19 A. Yes. I've seen it for our company and other
20 companies.
21 Q. What is PRWeb?
22 A. I believe it's a company that takes press
Page 171

1 releases from different companies and releases them on
2 the Internet.
3 Q. Is it fair to say that the attachment here, the
4 assemblage, is a collection of press releases from
5 Glidewell?
6 A. Yes.
7 Q. And part of your job in marketing is to be
8 contributing in some capacity to the press releases from
9 Glidewell; is that accurate?
10 A. No, I actually have nothing to do with these.
11 They may might take -- I see one quote from me on the
12 first one, and it looks like they pulled something from
13 an interview, but no, I don't -- we have a team of
14 copywriters who writes these.
15 Q. They're working in Mr. Shuck's group?
16 A. Yes.
17 Q. Does this fall under Mr. Cash's responsibility?
18 A. Yes, it does.
19 Q. And on the first page of Exhibit 19 there's a
20 reference to you and the BruxZir adjustment and
21 polishing set. Do you see that?
22 A. Yes, I do.
Page 172

1 Q. I think we talked a little bit about that this
2 morning. Do you recall that?
3 A. Yes.
4 Q. This is the set which I believe you said was
5 being manufactured by Axis Dental; is that right?
6 A. Correct.
7 Q. And it's still available; is that correct?
8 A. Yes.
9 Q. And I believe you said that Glidewell is
10 developing its own internal version, and in fact, that
11 was the example that I provided -- the physical sample
12 that I provided to you earlier.
13 A. I saw that, yes.
14 MR. JANKOWSKI: Let me also show you a document
15 that's already been marked as an exhibit. This document
16 was marked as Exhibit 26 previously. It's a one-page
17 document. Let me show you that.
18 (Whereupon, Exhibit 26 was marked
19 for identification.)
20 BY MR. JANKOWSKI:
21 Q. Do you recognize previously marked Exhibit 26?
22 A. Yes.
Page 173

Pages 170 to 173

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 Q. And what is Exhibit 26?
2 A. It is a series of directions on how to use that
3 BruxZir adjustment and polishing kit.
4 Q. So this says that this was developed by you;
5 correct?
6 A. Yeah, that's probably giving me a little too
7 much credit. I mean, I put it together and I tested all
8 the burs. I guess that's what they meant. Axis
9 actually prints that. That's on their product.
10 Q. Okay. Right, so this particular document is
11 generated by Axis, not by Glidewell?
12 A. Correct.
13 Q. Well, Axis is giving you a lot of credit
14 anyway.
15 A. "Conceived by Dr. Michael DiTolla" would
16 probably be more accurate.
17 Q. Having said that, though, I guess Glidewell and
18 you were associated with the development of the product;
19 is that fair?
20 A. I was, yeah. I was the only employee who was
21 involved with developing it, but we needed to come up
22 with some burs that would work well on these
Page 174

1 restorations.
2 Q. Do you have a connection to this product
3 separately from Glidewell?
4 A. No. They just -- when I teach courses, if it's
5 a hands-on course, they'll provide burs for the doctors
6 to use. And so they are a good supporter of the lecture
7 efforts that we'd have.
8 Q. So you don't make a royalty if Axis sells one
9 of these things?
10 A. At one point they were talking about doing a
11 royalty based on sales at the lectures. It's been
12 difficult to follow that through. I don't like to stand
13 on stage and sell stuff and pass out order forms, things
14 like that.
15 Q. Seems to undermine the educational part of what
16 you're doing?
17 A. Yeah, it kind of does undermine it if you get
18 into selling products like that at lectures.
19 Q. Sure, sure.
20 MR. JANKOWSKI: Let me provide you with what's
21 been previously marked as Exhibit 17. It's a one-page
22 document. It appears to be a letter from Nicole Fallon
Page 175

1 to Jim Shuck. It's unsigned.
2 (Whereupon, Exhibit 17 was marked
3 for identification.)
4 BY MR. JANKOWSKI:
5 Q. Dr. DiTolla, have you ever seen Exhibit 17
6 before?
7 A. I don't recall seeing this exact letter, but
8 I've seen many like it.
9 Q. Okay. And, in fact, I think Mr. Shuck
10 testified that this is actually a sample letter --
11 A. It is a sample letter, which is why it's
12 addressed to him from somebody else in the company.
13 Q. Right. Nicole wouldn't normally be writing a
14 letter to Jim Shuck on Glidewell letterhead; correct?
15 A. No. Not to tell him about BruxZir.
16 Q. Right. But you've seen letters like this that
17 have been sent out by Nicole to other recipients?
18 A. I haven't seen them sent from Nicole, but I've
19 seen them sent from Jim Shuck, from his desk. Most of
20 the marketing materials that come out have Jim's name at
21 the bottom, most of the letters like this.
22 Q. And the letters you've seen that were sent with
Page 176

1 Jim's name at the bottom, who were the recipients? Was
2 it dentists?
3 A. Dentists, yes.
4 Q. Was the body of the letter the same as you're
5 seeing it in Exhibit 17?
6 A. There's been so many, I can't say for sure, but
7 this is certainly representative of the type of letter
8 that would go out.
9 Q. Over what time frame do you believe Mr. Shuck
10 or his department have been sending out letters like
11 this to dentists?
12 A. Specifically regarding this product?
13 Q. Correct.
14 A. From June of 2009 up to the present.
15 Q. Okay. So over the entire history of the
16 commercial BruxZir crown product; correct?
17 A. Uh-huh, yes.
18 Q. And this particular letter is including an
19 incentive to prescribe BruxZir in the form of five
20 special BruxZir Rx coupons.
21 A. Yes.
22 Q. Do you see that?
Page 177

Pages 174 to 177

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 A. Yes.
2 Q. You're familiar of the providing of coupons
3 like that?
4 A. Yes.
5 Q. Are you involved personally in this coupon
6 program?
7 A. No.
8 Q. So you don't talk with dentists yourself about
9 these coupons?
10 A. No.
11 Q. I notice in the very center of the letter, the
12 product is characterized as "nearly chip-proof and can
13 be used for all patients, but it is ideal for bruxers
14 who have destroyed other restorations or natural teeth."
15 Do you see that?
16 A. Yes, I do.
17 Q. And that's again consistent with the marketing
18 message that Glidewell has for this product?
19 A. Yes, it is.
20 Q. I have an understanding that Nicole Fallon
21 contacted a dentist back East somewhere associated with
22 an offer of a coupon that's being alleged in this case
Page 178

1 as an example of confusion.
2 Are you aware of that?
3 A. I am not.
4 Q. So you're not familiar with Ms. Fallon's
5 communication with anybody about an alleged incident of
6 confusion between Glidewell's BruxZir product and
7 another competing product?
8 A. I am not.
9 MR. JANKOWSKI: Let me provide with you a
10 document that's been previously marked as Exhibit 18.
11 This is a one-page document out of what looks to be a
12 publication called "Enterprise 360."
13 (Whereupon, Exhibit 18 was marked
14 for identification.)
15 THE WITNESS: Actually, it's called Dental
16 Products Report.
17 MR. JANKOWSKI: Thank you.
18 dentalproductsreport.com. The title of this page is
19 "Glidewell Laboratories." It bears Production
20 No. GL199.
21 BY MR. JANKOWSKI:
22 Q. Dr. DiTolla, have you ever seen Exhibit 18
Page 179

1 before?
2 A. I have not.
3 Q. Are you familiar with
4 dentalproductsreport.com?
5 A. I'm familiar with Dental Products Report, the
6 magazine, which I think this is out of. I think they're
7 just listing their Web address down there.
8 Q. Okay. I see what you're saying.
9 This particular article is featuring
10 Greg Minzenmayer, COO of Glidewell Laboratories.
11 Do you see that?
12 A. Yes, I do.
13 Q. Does Mr. Minzenmayer get involved much in
14 marketing efforts on behalf of Glidewell?
15 A. Only in relation to implant products.
16 Q. Okay. Is it your understanding that this is a
17 reference to implant products?
18 I mean, to me this looks like a marketing
19 effort right here; would you agree?
20 A. Yes.
21 Q. But I don't think this particular piece is
22 limited to implants; is that correct?
Page 180

1 A. No. I see two other products down at the
2 bottom, and I see some other product names as I glance
3 at the interview itself.
4 Q. So to you this is a little unusual that
5 Mr. Minzenmayer is kind of the face of Glidewell for
6 this particular advertisement?
7 A. No. He's the COO of the company. It's just
8 typically me getting interviewed for these things as
9 kind of the public dentist face of the company.
10 So, no, I have no idea how -- what the genesis
11 of this piece was, but -- what did you ask? How unusual
12 it was or...
13 Q. Well, I was just wondering whether you thought
14 it was unusual that Mr. Minzenmayer was the face that
15 was presented here.
16 A. Oh.
17 Q. It sounds like you don't expect to see him as
18 the face of Glidewell on an advertisement.
19 A. Well, I'm not convinced that this is an
20 adver- -- I don't -- this doesn't look like a typical
21 advertisement. It certainly appears to be only about
22 us -- oh, "Special Advertising Section." I take that
Page 181

Pages 178 to 181

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 back. Okay.
2 Yeah, I haven't seen Greg interviewed as much
3 in nonimplant publications as in implant publications.
4 Q. In the implant arena, though, you would not be
5 surprised to see him associated --
6 A. No.
7 Q. Okay.
8 At the bottom you see a reference to "Featured
9 Products." Do you see that?
10 A. I do.
11 Q. It includes "BruxZir Solid Zirconia" at the
12 lower left. Do you see that?
13 A. I do.
14 Q. And the very last sentence underneath "BruxZir
15 Solid Zirconia" reads, "BruxZir is ideal for bruxers and
16 grinders who have previously broken other restorations."
17 Do you see that?
18 A. I do.
19 Q. So again this piece is consistent with the
20 marketing direction that Glidewell followed with this
21 product; correct?
22 A. Correct.

Page 182

1 Q. And this is, looks like, dated August 2010.
2 Do you see that?
3 A. I do.
4 Q. Are you in the picture in the upper right? It
5 looks like there's a picture of a bunch of Glidewell
6 people.
7 A. I'm not. That's the R&D department.
8 Q. Oh, this is the R&D team. Okay.
9 A. But Robin Carden's the huge guy in the back.
10 Q. I was about to ask that.
11 Okay. So that's Mr. Carden at the very back.
12 A. Yes.
13 Q. He's easy to spot.
14 A. That picture doesn't do him justice, because
15 it's taken from a ladder 20 feet up in the air.
16 Q. Okay. You can set that exhibit aside.
17 A. Okay.
18 Q. Let me ask you some -- have you go back in time
19 to 2009 or even before.
20 So what's your understanding for how well known
21 the terms "brux," "bruxer" and "bruxism" were in the
22 dental dentistry.

Page 183

1 A. The terms "brux," "bruxism"...
2 Q. And "bruxer."
3 A. And "bruxer"?
4 Q. Yeah. And let's go back to when you were at
5 the University of the Pacific, when you were in dental
6 school. I mean, did those terms come up, you know,
7 during your dentist education?
8 A. Yes.
9 Q. In what context would they have come up?
10 A. In diagnosis and treatment planning. In the
11 talk of occlusion, classes like occlusion where you're
12 talking about how the teeth come together.
13 Q. And are all three of those terms, terms that
14 would have come up, "brux," "bruxer" and "bruxism"?
15 A. Yes.
16 Q. And based on your education and knowledge,
17 what's your definition of "bruxism"?
18 A. "Bruxism" I would define as a parafunctional or
19 an abnormal wearing of the teeth through muscle activity
20 in the patient.
21 Q. So "muscle activity" would mean grinding or
22 clenching?

Page 184

1 A. Bruxism, yeah, tends to refer to grinding more
2 than clenching, but muscle activity is responsible for
3 both of them.
4 Q. Is bruxism something that -- the people
5 afflicted with bruxism, they grind their teeth without
6 even being aware of it?
7 A. That's correct.
8 Q. How common is it in the population, do you
9 know?
10 A. It's hard to say. I've seen numbers saying
11 50 to 60 percent, but they always lump in the clencher
12 and grinders. So I haven't seen one that is strictly
13 based on bruxism, but I've seen 50 to 60 for the
14 combination of the two, the clencher and the grinders,
15 who show different patterns on their teeth by how they
16 wear.
17 Q. So clencher have one pattern; grinders have
18 another?
19 A. Yes.
20 Q. I'm sorry. Combining those two is what
21 percentage?
22 A. 50 to 60 are the estimates that I've heard.

Page 185

Pages 182 to 185

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 Q. 50 to 60 percent?</p> <p>2 A. Yeah.</p> <p>3 Q. So is the estimate that 50 to 60 percent of the</p> <p>4 population suffers from bruxism or...</p> <p>5 A. Or clenching.</p> <p>6 Q. Or clenching.</p> <p>7 Does anybody, you know, split out what</p> <p>8 percentage suffers from bruxism without clenching?</p> <p>9 A. I have not seen that.</p> <p>10 Q. You haven't seen that? Okay.</p> <p>11 How about the term just "brux"? I mean, you're</p> <p>12 also aware of the term "brux"; correct?</p> <p>13 A. Yeah, but that's the least common of the three.</p> <p>14 I mean, it's just used as a verb, "Does she brux?" or</p> <p>15 something like that.</p> <p>16 Q. To brux?</p> <p>17 A. Yeah.</p> <p>18 Q. And then "bruxer" is a noun; correct?</p> <p>19 A. Yes.</p> <p>20 Q. What's your definition of "bruxer"?</p> <p>21 A. Someone who suffers from bruxism.</p> <p>22 Q. And for a population of dentists, they'll be</p> <p style="text-align: right;">Page 186</p>	<p>1 other companies off the top of my head where I've seen</p> <p>2 them do that.</p> <p>3 Q. Would it surprise you to hear that other</p> <p>4 companies are using the term "bruxer" to refer to</p> <p>5 somebody afflicted with bruxism?</p> <p>6 A. Like what kind of company?</p> <p>7 Q. Companies who provide goods or services in the</p> <p>8 dental industry.</p> <p>9 A. No, it would not surprise me.</p> <p>10 Q. In other words, Glidewell is talking about its</p> <p>11 product being ideal for bruxers. It wouldn't surprise</p> <p>12 you that there's other companies out there --</p> <p>13 A. Right.</p> <p>14 Q. -- saying, "Our product is good for bruxers" --</p> <p>15 A. Correct.</p> <p>16 Q. -- or something like that?</p> <p>17 A. Correct.</p> <p>18 Q. How about -- have you heard the phrase "bruxer</p> <p>19 crown" used together? And I'm spelling it b-r-u-x-e-r,</p> <p>20 space, "crown." Have you ever seen that phrase used?</p> <p>21 A. No.</p> <p>22 Q. So you haven't used -- I mean, does Glidewell</p> <p style="text-align: right;">Page 188</p>
<p>1 aware of bruxism and the term "bruxer"; correct? In the</p> <p>2 United States?</p> <p>3 A. Yes, they've heard those words.</p> <p>4 Q. In fact, that's one reason Glidewell's using it</p> <p>5 in its marketing materials is because the target</p> <p>6 audience is dental professionals who will recognize the</p> <p>7 term; correct?</p> <p>8 A. That's part of what makes the name memorable.</p> <p>9 Q. And you're familiar with the term "bruxer"</p> <p>10 being used by others other than Glidewell; correct?</p> <p>11 A. BruxZir with a Z?</p> <p>12 Q. I'm sorry. Now I've got to clarify.</p> <p>13 "Bruxer," b-r-u-x-e-r, that term is used,</p> <p>14 you know, throughout the dentistry to refer to somebody</p> <p>15 who has bruxism; correct?</p> <p>16 A. Correct.</p> <p>17 Q. And you've seen the term "bruxer," b-r-u-x-e-r,</p> <p>18 you know, in written publications of other companies</p> <p>19 referring to people who are afflicted with bruxism;</p> <p>20 correct?</p> <p>21 A. Not other companies, but in dental journal,</p> <p>22 articles written by dentists. I can't think of any</p> <p style="text-align: right;">Page 187</p>	<p>1 ever use that phrase?</p> <p>2 A. B-r-u-x-e-r "crown"?</p> <p>3 Q. Correct. Correct.</p> <p>4 A. No. I don't know how you would even use it in</p> <p>5 a sentence.</p> <p>6 Q. Well, a bruxer crown -- b-r-u-x-e-r "crown" as</p> <p>7 a crown for bruxers. You haven't seen that usage?</p> <p>8 A. No. Nor clencher crown.</p> <p>9 Q. Okay.</p> <p>10 A. Or perio crown.</p> <p>11 Q. What was the last one?</p> <p>12 A. Perio crown for somebody with -- you know, that</p> <p>13 needed it for periodontal splinting or something like</p> <p>14 that.</p> <p>15 Q. Okay.</p> <p>16 MR. JANKOWSKI: Dr. DiTolla, I'm going to hand</p> <p>17 you a document previously marked as Exhibit 27. This is</p> <p>18 a document produced in this case bearing Production</p> <p>19 Nos. KDA-002350. It is a three-page document, and it</p> <p>20 has a reference to Oral Arts Dental Laboratories on it.</p> <p>21 (Whereupon, Exhibit 27 was marked</p> <p>22 for identification.)</p> <p style="text-align: right;">Page 189</p>

Pages 186 to 189

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 THE WITNESS: Okay.
2 BY MR. JANKOWSKI:
3 Q. Dr. DiTolla, I'll just direct your attention to
4 the first page of Exhibit 27, and you'll see there's a
5 reference to a corrective product -- I'm not using the
6 right phrase. What's the right phrase?
7 MR. TACHNER: Restorative?
8 BY MR. JANKOWSKI:
9 Q. A restorative product -- dental product.
10 Do you see that?
11 A. No. Where it says "Recommended Cementation for
12 Zirconia"? What are we...
13 Q. Well, the page as a whole. What's being
14 shown -- what's your understanding of what's been shown
15 on the front page of Exhibit 27?
16 A. It looks like a website for a BruxZir crown or
17 bridge.
18 Q. Right, right.
19 A. Okay.
20 Q. And in this particular one, the very bottom
21 line of -- you know, the description underneath the
22 pictures there says, "Ideal for patients with reduced
Page 190

1 vertical clearance or bruxers."
2 Do you see that?
3 A. I do.
4 Q. So here's an example of the noun "bruxer" being
5 used by this dental lab to refer to somebody who could
6 be using this product; correct?
7 A. Correct.
8 Q. And, as you said, you're not surprised to see
9 that; correct?
10 A. Correct.
11 MR. JANKOWSKI: Dr. DiTolla, I'm going to hand
12 you a document previously marked as Exhibit 28. This is
13 a two-page document associated with Barth Dental Labs.
14 It was produced in this case with Production
15 Nos. KDA-002446 through 2447.
16 (Whereupon, Exhibit 28 was marked
17 for identification.)
18 BY MR. JANKOWSKI:
19 Q. Have you seen this document before?
20 A. I have not.
21 Q. Are you familiar with Barth Dental Labs?
22 A. Only heard the name in passing.
Page 191

1 Q. Are they one of Glidewell's authorized
2 laboratories, do you know?
3 A. I do not. It doesn't appear they are, but I do
4 not.
5 Q. They have a product here that they're calling a
6 Z-Brux crown. Do you see that?
7 A. I do.
8 Q. Looking at the description to the right of the
9 picture of the Z-Brux crown, you see that it refers to
10 it as a solid zirconia crown with no porcelain overlay
11 and that it provides strength and esthetics.
12 Do you see that?
13 A. I do.
14 Q. So this is something which is competing with
15 Glidewell's BruxZir product, B-r-u-x-Z-i-r, crown;
16 correct?
17 A. Correct.
18 Q. And they characterize this product as
19 "indicated as an option for bruxers who have broken down
20 natural teeth or for PFM metal occlusal or full-cast
21 crowns." Do you see that?
22 A. I do.
Page 192

1 Q. So this is another instance of a product like
2 this being indicated for bruxers. Do you see that?
3 A. I do.
4 Q. And, again, that doesn't surprise you because
5 it's a competing product to Glidewell's product;
6 correct?
7 A. No, it doesn't surprise me, because as I sat
8 and thought about it, there are lots of companies who
9 advertise products for bruxers, including people who
10 make occlusal splints and the -- there's a lot of people
11 who are trying to help people with bruxism.
12 MR. JANKOWSKI: Next I'm going to hand you a
13 document that was previously marked as Exhibit 32. This
14 is a two-page document produced in this case bearing
15 Production Nos. KDA-002237 -- I'm sorry. It's a
16 three-page document bearing Production Nos. KDA-002237
17 through 2239, and it's a printout associated with a
18 company China Dental Outsourcing, Inc.
19 (Whereupon, Exhibit 32 was marked
20 for identification.)
21 BY MR. JANKOWSKI:
22 Q. Are you familiar with China Dental Outsourcing,
Page 193

Pages 190 to 193

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 Inc.?
2 A. I am not.
3 Q. Just looking at Exhibit 32, it appears to be an
4 advertisement for an all-ceramic product which is
5 all-zirconia for bruxers.
6 Do you see that?
7 A. I do.
8 Q. So, again, this is another competing product to
9 Glidewell's BruxZir crown; would you agree?
10 A. I would.
11 Q. And it's indicated here as being something
12 which can be used with bruxers. You'd agree with that?
13 A. I do.
14 Q. The way they characterize it here is they say
15 "for bruxers and heavy biters," second line down.
16 "Heavy biters," is that a term of art for
17 dentists as well?
18 A. That is not.
19 Q. Okay.
20 A. That's poorly translated English.
21 MR. JANKOWSKI: Next I'm going to hand you a
22 document previously marked as Exhibit 33. This is a
Page 194

1 one-page document produced in this case bearing
2 Production No. KDA-002359 from Assured Dental Lab.
3 (Whereupon, Exhibit 33 was marked
4 for identification.)
5 BY MR. JANKOWSKI:
6 Q. Are you familiar with Assured Dental Lab?
7 A. I am not.
8 Q. This has a description of picking the right
9 metal for a restoration. Do you see that?
10 A. I think it says "right metal-free restoration."
11 Q. Thank you, yes. "Picking the right metal-free
12 restoration," correct.
13 One of the options what they call a
14 full-contour zirconia. Do you see that?
15 A. I do.
16 Q. So this is another example of a product that's
17 competing with Glidewell's BruxZir crown; correct?
18 A. Correct.
19 Q. And looking down, you'll see the bullet point
20 lists. Down at the bottom there's, it looks like, nine
21 bullet points below the photo. The fifth bullet point
22 down makes reference to a Procera Zirconia or bruxer
Page 195

1 crown made from IPS e.max.
2 Do you see that?
3 A. Yes.
4 Q. We were talking a little bit about some of
5 those products this morning; correct?
6 A. Yes.
7 Q. Procera and also the IPS e.max.
8 So what's your understanding from reading this
9 what they're referring to when they put here "bruxer
10 crown" with "bruxer" in quotes?
11 A. I haven't the slightest idea. I haven't the
12 slightest idea, but I just -- guessing by the other
13 grammatical errors and things that I see on this page,
14 I'm assuming it's more on their end than my end that I
15 don't understand what they're talking about.
16 Q. So to you a bruxer crown isn't a reference to a
17 crown for bruxers?
18 A. No. This is the first time I've ever seen that
19 term used like that or heard it used like that.
20 Q. In that same line, as you keep going down,
21 you'll see a reference to a full-contour zirconia.
22 Do you see that?
Page 196

1 A. I can only guess that it's in quotes because
2 they must assume it's the incorrect use of the word.
3 Q. How about down below, right below it. Do you
4 see it says "full-contour zirconia"?
5 A. Yes.
6 Q. We talked about full-contour, the meaning of
7 that, before. Would you interpret "full-contour
8 zirconia" there to mean a monolithic --
9 A. Yes.
10 Q. -- zirconia crown?
11 A. Definitely.
12 Q. Then if you go down to the second bullet point
13 from the bottom, you see, "Patient a grinder or bruxer
14 BruxZir." Do you see that?
15 A. Uh-huh.
16 Q. And it says, "Use IPS e.max, bruxer crown or
17 ultimate restorative." Do you see that?
18 A. Yes.
19 Q. So again you've got that term "bruxer crown."
20 And, again, I mean, do you have an understanding what
21 they mean by that?
22 A. No. But Ivoclar will be very interested to see
Page 197

Pages 194 to 197

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 that. No, I have no idea what that means.</p> <p>2 Why is it in quotes the first time and not the</p> <p>3 second time?</p> <p>4 Q. I didn't create the document.</p> <p>5 A. I know.</p> <p>6 MR. JANKOWSKI: I'm going to have the</p> <p>7 court reporter mark as the next exhibit No. 45. This is</p> <p>8 a three-page document bearing Production Nos. KDA-002770</p> <p>9 through 2772, and the document at the top of it has a</p> <p>10 reference to the U.S. Food and Drug Administration.</p> <p>11 (Whereupon, Exhibit 45 was marked</p> <p>12 for identification.)</p> <p>13 THE WITNESS: Uh-huh.</p> <p>14 BY MR. JANKOWSKI:</p> <p>15 Q. Are you familiar with the U.S. Food and Drug</p> <p>16 Administration website?</p> <p>17 A. No.</p> <p>18 Q. You are familiar with the U.S. Food and Drug</p> <p>19 Administration --</p> <p>20 A. Yes.</p> <p>21 Q. -- as an entity?</p> <p>22 Okay. Here's a document that appears to be</p> <p style="text-align: right;">Page 198</p>	<p>1 A. Because that's what a BruxZir crown is. It's</p> <p>2 misspelled here.</p> <p>3 Q. Even though it's spelled with a lowercase b and</p> <p>4 spelled b-r-u-x-e-r?</p> <p>5 A. Yes. It's spelled with a lowercase and an</p> <p>6 uppercase on the last exhibit.</p> <p>7 Yeah, it's -- that term is not a term that is</p> <p>8 recognized or has ever been recognized by dentists, you</p> <p>9 know, prior to us coming up with a different spelling of</p> <p>10 "bruxer." So it's clear to me that, yes, they're</p> <p>11 referring to one of our BruxZir crowns, either from</p> <p>12 Glidewell or one of the 180 authorized labs.</p> <p>13 Q. Now, the writer of this presumably knows what a</p> <p>14 bruxer is, just using the noun form b-r-u-x-e-r;</p> <p>15 correct?</p> <p>16 A. I don't know. I don't know how these were</p> <p>17 reported or who's writing it, for that matter.</p> <p>18 Q. Do you have any reason to believe the writer</p> <p>19 doesn't know what a bruxer is?</p> <p>20 A. I wouldn't know unless you told me what the</p> <p>21 occupation of the person who wrote this was.</p> <p>22 Q. Well, are you familiar with the</p> <p style="text-align: right;">Page 200</p>
<p>1 from the website that includes a -- what's labeled as an</p> <p>2 Adverse Event Report associated with Kerr Corporation --</p> <p>3 A. Kerr.</p> <p>4 Q. -- Kerr Corporation, spelled K-e-r-r, and it</p> <p>5 looks like a dental device.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And the narrative portion, where it says</p> <p>9 "Manufacturer Narrative," says, "The bruxer crown was</p> <p>10 recemented with a different product without further</p> <p>11 incident, and the patient is doing fine."</p> <p>12 So here is an example of a reference to the</p> <p>13 phrase "bruxer crown." Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. So what's your understanding of what's being</p> <p>16 meant here in this narrative?</p> <p>17 A. That one of our crowns was recemented with a</p> <p>18 different product without further incident, and the</p> <p>19 patient's doing fine, one of our Glidewell BruxZir</p> <p>20 crowns.</p> <p>21 Q. Why do you think it's a Glidewell BruxZir</p> <p>22 crown?</p> <p style="text-align: right;">Page 199</p>	<p>1 Kerr Corporation?</p> <p>2 A. Yes.</p> <p>3 Q. Who's the Kerr Corporation?</p> <p>4 A. They're a company over here in Orange that</p> <p>5 makes dental products.</p> <p>6 Q. Okay. So if this person who's the author of</p> <p>7 this narrative is somebody who's a dental professional,</p> <p>8 you'd expect him to know what "bruxer," the noun,</p> <p>9 b-r-u-x-e-r, is; correct?</p> <p>10 A. It depends. They have a lot of employees. You</p> <p>11 could go to our shipping department and find a lot of</p> <p>12 people who don't know what a BruxZir is.</p> <p>13 Q. So to you the most likely interpretation of</p> <p>14 this is that the "bruxer" here is a misspelling of</p> <p>15 B-r-u-x-Z-i-r; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. Do you see anything else in here that makes you</p> <p>18 think that this is a Glidewell product?</p> <p>19 A. No.</p> <p>20 Q. Now, under "Event Description" it makes a</p> <p>21 reference to two patients experiencing a debonding of</p> <p>22 crowns. Do you see that?</p> <p style="text-align: right;">Page 201</p>

Pages 198 to 201

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 A. I do.
2 Q. With Glidewell's product, is it typically
3 cemented or is it bonded onto the tooth?
4 A. It can be either one.
5 You know, you're right. That's how we know
6 this is a full-contour zirconia crown. Remember when I
7 talked to you about the Ivoclean and how one of the
8 downsides of the BruxZir was the fact that they're --
9 they've been falling off more often than regular crowns
10 because of the contamination off the phosphates in the
11 saliva? The thing that got us to notice that this was
12 actually happening was doctors calling us with reports
13 like this saying crowns had fallen off multiple times.
14 We usually don't get those calls from doctors,
15 because the falls off and they just put it back on
16 again. But the crowns were falling off multiple times,
17 and they were continually contaminated with saliva
18 before they were cemented. So that's finally when we
19 realized we need to start looking around when patients
20 called us -- I mean when doctors called us and said,
21 "These crowns are falling off multiple times." It was
22 really the first time in dentistry, because it's the
Page 202

1 only restoration that gets contaminated by saliva.
2 So I look at that, and that's interesting to
3 see that it -- two patients experiencing debonding of
4 crowns. That, to me, is another clue that it's the
5 full-contour zirconia crown here as opposed to just a
6 gold crown, for example.
7 Q. It could be a full-contour zirconia crown
8 provided by somebody other than Glidewell though;
9 correct?
10 A. That too. Yeah, that too. But to me it just
11 suggests that somebody said the name "BruxZir" and
12 somebody typed in the name "BruxZir" or whatever
13 happened. To me, that is a misspelling, but yeah, it
14 could have been another full-contour crown by what I was
15 saying. It's not specific to our full-contour zirconia
16 crowns that they fall off. It happens to all
17 full-contour zirconia crowns.
18 Q. I think I asked you this question earlier, but
19 I just want to get back to this question of the use of
20 the BruxZir name. And we talked about how you were
21 involved, you know, back in mid-2009 about that.
22 A. Uh-huh.
Page 203

1 Q. We've also talked about how the BruxZir,
2 B-r-u-x-Z-i-r, name has shown up on milling machines and
3 so on.
4 A. Right.
5 Q. Is it fair to say they're not consulting you
6 internally at Glidewell before they use the name on a
7 milling machine or on some other product? Is that
8 correct?
9 A. Consulting me?
10 Q. Correct.
11 A. Yeah, no, they don't need to consult me for
12 that.
13 Q. And I think we've already kind of established
14 that that's not really your area. It's these other --
15 these other products --
16 A. Right.
17 Q. -- what's going on with them is not -- that's
18 not -- you're not the person to talk to about that?
19 A. Correct.
20 Q. And that includes the use of the mark on those
21 products. You're not --
22 A. Correct.
Page 204

1 Q. -- the person to talk to. Okay.
2 And we also talked about marketing channels for
3 the mark, for example, the mark being used in various
4 capacities, and we've looked at some exhibits today.
5 But I think we established that other people within the
6 marketing department are the people who are deciding
7 what goes into what marketing channels; is that fair?
8 A. Yes.
9 Q. And, again, your job is to be a dentist, to be
10 a clinical practitioner and to use the product and teach
11 the public about the product?
12 A. Correct.
13 Q. We did look at the one document with
14 Nicole Fallon sending the sample letter that was
15 addressed to Mr. Shuck. Let me ask you more generally:
16 From your interactions with the dental community, are
17 you aware of any incidents of confusion between
18 Glidewell's BruxZir name, B-r-u-x-Z-i-r, and
19 Keating Dental Art, Inc.'s use of KDZ Bruxer,
20 B-r-u-x-e-r?
21 Do you have personal knowledge of any incidents
22 of confusion between those two names?
Page 205

Pages 202 to 205

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 A. No.
2 Q. So that's not something where somebody's coming
3 up to you to talk about that or raise some issue where
4 you're like, "Whoa, that's the wrong thing"?
5 A. Yeah, no one's ever asked me that question.
6 Q. Are you involved at all in Glidewell's efforts
7 to enforce its trademarks in BruxZir, B-r-u-x-Z-i-r?
8 A. No, I'm not.
9 Q. So you're not involved in identifying potential
10 problems, people to go after --
11 A. No.
12 Q. That's other people?
13 A. That's other -- yeah, that's the legal people.
14 Q. Do you know who is involved in enforcement?
15 Obviously Mr. Allred is. Are there people
16 outside of the legal department who he's working with?
17 A. Within the company?
18 Q. Right.
19 A. Not to my knowledge. I think he's the -- well,
20 there might be one other attorney who I haven't met
21 before who works for us now, but I don't know if he's
22 involved at all in that case. So I don't -- no, I don't
Page 206

1 see Keith talking to anybody but outside people.
2 MR. JANKOWSKI: Why don't we take a real short
3 break, and then I just want to bring a laptop over and
4 show Dr. DiTolla the compendium that was produced in the
5 case.
6 Not the whole thing obviously, but I just want
7 to show it and see whether you recognize it and can
8 identify what it is.
9 THE WITNESS: Okay. Sure.
10 MR. TACHNER: So what are you talking about,
11 10 minutes?
12 MR. JANKOWSKI: Even 5.
13 MR. TACHNER: Okay. Sure.
14 THE VIDEOGRAPHER: Off the record at 3:30 p.m.
15 (Recess taken.)
16 THE VIDEOGRAPHER: Back on the record
17 at 3:38 p.m.
18 BY MR. JANKOWSKI:
19 Q. Now, Dr. DiTolla, what I'd like to do next is
20 address with you a topic, which is Glidewell's
21 compendium of videos that it's created associated with
22 its BruxZir product.
Page 207

1 A. Okay.
2 Q. First of all, do you understand what I mean
3 when I talk about a compendium.
4 A. I think you're referring to the DVD that we
5 call the Compendium Edition.
6 Q. Correct.
7 A. Okay.
8 Q. Can you describe for me what the compendium is?
9 A. I believe it was just a name that we came up
10 with of a bunch of leftover clinical cases that I had
11 where they weren't feature cases, but we decided to take
12 them and put them together on a compilation disc, and
13 someone came up with the name Compendium Edition.
14 Q. Who's the intended audience of the Compendium
15 Edition.
16 A. Dentists.
17 Q. Dentists?
18 A. Uh-huh.
19 Q. Okay. And the Compendium includes an
20 introduction; correct?
21 A. I haven't seen this in forever.
22 Q. Okay. And you don't recall?
Page 208

1 A. I don't recall, no.
2 Q. You'll get to see in a moment.
3 A. Okay.
4 Q. My understanding is there's an introduction,
5 and then there's a number of videos associated with the
6 Compendium as well.
7 A. Okay.
8 Q. What I'd like to do now is just play the
9 introduction and have you watch it --
10 A. Okay.
11 Q. -- and just see whether you recognize what
12 you're looking at. Okay?
13 A. Okay.
14 (DVD played.)
15 BY MR. JANKOWSKI:
16 Q. I just want to ask you, do you recognize the
17 video that you were watching?
18 A. Yes, it was really good. That speaker you
19 chose was amazing.
20 Q. I thought you would like that.
21 Do you recognize that as part of the compendium
22 that Glidewell put together?
Page 209

Pages 206 to 209

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 A. Yes.
2 Q. And, in fact, that was you in the video;
3 correct?
4 A. That was.
5 Q. Did you write the script?
6 A. That's without a script. That's off the top of
7 my head.
8 Q. So you were speaking spontaneously or --
9 A. Yes. Yeah.
10 Q. "Extemporaneously" is maybe the best word.
11 A. Yes.
12 Q. So that was filmed in 2011; correct?
13 A. I made a reference to year-to-date 2011, so it
14 was -- I don't know when, but it was at some point
15 in 2011.
16 Q. And that was filmed at Glidewell's facility?
17 A. Yes.
18 Q. Does Glidewell have like a little studio for
19 that purpose?
20 A. That's actually in my little dental office, but
21 there is a studio downstairs where we can shoot as well.
22 Q. So it's a part of your dental office which you
Page 210

1 use for making videos?
2 A. It is the dental office. There just didn't
3 happen to be a patient in there, so I'm just sitting in
4 my regular chair next to the patient chair, recording
5 it.
6 Q. And the person filming it is a Glidewell
7 employee; correct?
8 A. Yes.
9 Q. And he's a videographer?
10 A. He is.
11 Q. Is he the same videographer that tends to film
12 all your videos?
13 A. He is.
14 Q. What's his name?
15 A. James Kwasniewski, K-w-a-s-n-i-e-w-s-k-i.
16 Q. These Polish names always get you.
17 A. I know.
18 Q. In the video you made reference
19 to 145 authorized labs, so I think that's number is up
20 to 180 by now; correct?
21 A. Something like that, yes.
22 Q. And in the video you made reference to there
Page 211

1 being a million crowns that had been done.
2 Did you hear that?
3 A. Between our lab and the partner laboratories,
4 yes.
5 Q. Right, right. Do you know what that number has
6 grown to today?
7 A. I don't off the top of my head.
8 Q. Okay.
9 A. But it's probably doubled, I would assume.
10 Q. And you also had in there some percentage as to
11 what percentage of the crowns were all-ceramic versus
12 PFMs. I think you said 27 percent of the crowns were
13 PFMs in that intro.
14 Do you know what that percentage is today?
15 A. Yeah, it's down to 20 now.
16 Q. So now it's down to 20 percent of crowns being
17 PFMs.
18 A. Yes.
19 Q. And that was a true and correct copy of the
20 video as far as you know; correct?
21 I mean, again, this is the video that was
22 produced to Glidewell in this case, but it looks like an
Page 212

1 unaltered, accurate video to you?
2 A. Correct.
3 Q. You don't see anything -- any reason to think
4 it was altered or anything?
5 A. Not until it just randomly stopped playing.
6 Q. Okay. Right.
7 A. I don't know what that was about, but...
8 Q. I don't know either, but I think we saw enough
9 for our purposes here today.
10 Okay. One question I have for you that I meant
11 to ask you earlier when we were talking about "bruxer,"
12 b-r-u-x-e-r, as a noun.
13 A. Uh-huh.
14 Q. Have you ever heard that word used as a noun to
15 refer to a crown?
16 A. No.
17 Q. So you've never heard a crown itself referred
18 as a bruxer, b-r-u-x-e-r?
19 A. No.
20 MR. JANKOWSKI: Let me show you Tab D. Let me
21 have the court reporter mark as Exhibit 46 a two-page
22 document, which is a prescription form from Trachsel
Page 213

Pages 210 to 213

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 Dental Studio bearing Production Nos. KDA-002832</p> <p>2 and 2833.</p> <p>3 (Whereupon, Exhibit 46 was marked</p> <p>4 for identification.)</p> <p>5 BY MR. JANKOWSKI:</p> <p>6 Q. And, Dr. DiTolla, if you could just briefly</p> <p>7 look at Exhibit 46.</p> <p>8 Are you familiar with the Trachsel Dental</p> <p>9 Studio?</p> <p>10 A. I am not.</p> <p>11 Q. Okay. This looks like a prescription form of</p> <p>12 the type that a dentist office would use to order a</p> <p>13 crown, for example; correct?</p> <p>14 A. Correct.</p> <p>15 Q. And if you look on the left side, you'll see</p> <p>16 there are various products that can be ordered through</p> <p>17 the prescription form.</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. And do you see about -- maybe seven entries</p> <p>21 down I see an "all-zirconia Bruxer," spelled</p> <p>22 B-r-u-x-e-r.</p> <p style="text-align: right;">Page 214</p>	<p>1 Q. And it says "Porcelain to Zirconia." So that's</p> <p>2 one of these bilayer products?</p> <p>3 A. Correct.</p> <p>4 Why am I not seeing that for some reason?</p> <p>5 Q. I'm sorry. "Lava" is the third entry down.</p> <p>6 A. Oh, it's in parentheses after it, yes.</p> <p>7 Q. And at the very bottom there's references to</p> <p>8 some gold products. Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Do you know what percentage of patients today</p> <p>11 get gold?</p> <p>12 A. Just over 3 percent.</p> <p>13 Q. Just over 3 percent?</p> <p>14 MR. JANKOWSKI: I'd like to have the</p> <p>15 court reporter mark as Exhibit 47 a one-page document</p> <p>16 bearing Production No. KDA-002758, and it has a</p> <p>17 reference on it to Dani, spelled D-a-n-i, Dental Studio.</p> <p>18 (Whereupon, Exhibit 47 was marked</p> <p>19 for identification.)</p> <p>20 BY MR. JANKOWSKI:</p> <p>21 Q. And, Dr. DiTolla, if you could just briefly</p> <p>22 look at Exhibit 47. This appears to be another</p> <p style="text-align: right;">Page 216</p>
<p>1 Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. So this appears to be an instance where the</p> <p>4 word "bruxer," b-r-u-x-e-r, is being used as a noun as a</p> <p>5 reference to a crown. Would you agree with that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know whether the references elsewhere on</p> <p>8 here are also to crowns?</p> <p>9 For example, the Empress, is that a reference</p> <p>10 to a crown? That's the second entry down.</p> <p>11 A. Not necessarily. It could be a crown or a</p> <p>12 veneer or an inlay or an onlay.</p> <p>13 Q. And how about the Procera? That also could be</p> <p>14 various things?</p> <p>15 A. That could be a crown or a veneer as well.</p> <p>16 Q. How about the Mirage Fortress? Do you know</p> <p>17 what that is?</p> <p>18 A. No, I don't. I thought that was off the</p> <p>19 market, but...</p> <p>20 Q. And I see the reference to Lava. I think you</p> <p>21 were testifying about Lava this morning; correct?</p> <p>22 A. Correct.</p> <p style="text-align: right;">Page 215</p>	<p>1 prescription form that a dentist would use to order</p> <p>2 dental restoration products; do you agree?</p> <p>3 A. I agree.</p> <p>4 Q. Are you familiar with Dani Dental Studio?</p> <p>5 A. No.</p> <p>6 Q. You'll see on the left side there, there's a</p> <p>7 number of all-ceramic products that are listed as</p> <p>8 available. Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. I see "e-max," which I would interpret as being</p> <p>11 a reference to the e.max product we were talking about</p> <p>12 earlier; would you agree?</p> <p>13 A. Correct. But as you pointed out, it's and</p> <p>14 e-dot-max, not a hyphen.</p> <p>15 Q. If you look down, there's two zirconia products</p> <p>16 identified with "zirconia" in the name, "Full Zirconia"</p> <p>17 and then in parentheses "Bruxer."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. And then a zirconia crown, in parentheses,</p> <p>21 "layered." Do you see that?</p> <p>22 A. I do.</p> <p style="text-align: right;">Page 217</p>

Pages 214 to 217

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 Q. And then I believe Lava we already established
2 was a product that had some zirconia in it as well;
3 correct?
4 A. Yeah, it's a layered zirconia crown.
5 Q. So here, this is an instance of Dani Dental
6 Studio referring to a full zirconia crown as a Bruxer;
7 wouldn't you agree?
8 A. I would agree.
9 MR. JANKOWSKI: I'm going to have the
10 court reporter mark as Exhibit 48 a five-page document
11 bearing Production Nos. GL-226, listed as page 1 of 5
12 through page 5 of 5. The document at its top says
13 "Standard Operating Procedure," and also there's a
14 reference to PrismaTik Dentalcraft, Inc.
15 (Whereupon, Exhibit 48 was marked
16 for identification.)
17 BY MR. JANKOWSKI:
18 Q. Now, Dr. DiTolla, have you ever seen Exhibit 48
19 before?
20 A. I have not.
21 Q. Just looking at it, do you have any
22 understanding for what this document is?

Page 218

1 A. Not really.
2 Q. Do you know who PrismaTik Dentalcraft is?
3 A. I do.
4 Q. Who are they?
5 A. I believe a company that -- manufactures the
6 BruxZir? I don't know the exact relationship between us
7 and them.
8 Q. When you say "BruxZir," you mean the milling
9 pucks?
10 A. Yes. Yes, the BruxZir material.
11 Q. So they would be a supplier of the BruxZir
12 zirconia material?
13 A. Yeah, I'm guessing, but -- I shouldn't even
14 have commented. I'm just kind of guessing. I know that
15 they have something to do with it, but I'm not exactly
16 sure what their relationship is.
17 Q. Do you recognize any of the names that are
18 listed there with signatures?
19 A. Three of them I do.
20 Q. Which three?
21 A. Grant, Tom and Kathleen.
22 Q. And who is Grant?

Page 219

1 A. Well, it says "Director of Implant R&D" to the
2 left of his name.
3 Q. Is he a director of implant R&D at Glidewell?
4 A. Yes.
5 Q. And it lists "Zirconia Manufacturing
6 Supervisor" next to Tom Valentine's [sic] name. Is that
7 his position at Glidewell?
8 A. It's Valenti, and yes, that's my understanding
9 that's his position.
10 Q. Valenti. Thank you.
11 And then next to Kathleen's name -- I don't
12 even want to attempt her last name.
13 A. Dragovich.
14 Q. Dragovich.
15 Do you know what her title is?
16 A. It looks to be Manager of RA/QA.
17 Q. Do you know what RA and QA are?
18 A. No. I could take an educated guess, but...
19 Q. QA might be quality assurance?
20 A. Right.
21 Q. And the name above Kathleen's you don't
22 recognize because it's such a scribbled signature;

Page 220

1 correct?
2 A. Right.
3 Q. Okay. And you weren't involved at all in the
4 manufacturing of the milled zirconia; is that correct?
5 A. No. It's at another building.
6 Q. Who at Glidewell would be able to answer
7 questions on this topic?
8 A. Robin Carden.
9 Q. Mr. Carden?
10 A. Yes.
11 MR. JANKOWSKI: I'll have the court reporter
12 mark as Exhibit 49 a document, roughly, 15 pages. I'm
13 estimating. On the front page it says
14 "Northcoast Research," and it starts off with Production
15 No. GL-188, page 1 of 6, and it ends with GL-189, page 7
16 of 7.
17 (Whereupon, Exhibit 49 was marked
18 for identification.)
19 BY MR. JANKOWSKI:
20 Q. Dr. DiTolla, have you ever seen Exhibit 49
21 before or any of the parts of it?
22 A. I've seen this publication before. I don't

Page 221

Pages 218 to 221

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

<p>1 know if I've seen this exact issue.</p> <p>2 Q. And what is the publication?</p> <p>3 A. Northcoast Research. They're an analyst group</p> <p>4 for the health care industry.</p> <p>5 Q. Do you have an understanding for why this</p> <p>6 document was produced in the case by Glidewell?</p> <p>7 A. No.</p> <p>8 Q. Is there somebody at Glidewell who would be</p> <p>9 monitoring the content of this publication or likely be</p> <p>10 reading it?</p> <p>11 A. Jim Shuck.</p> <p>12 MR. JANKOWSKI: I'll have the court reporter</p> <p>13 mark as Exhibit 50 Glidewell's Initial Disclosures</p> <p>14 Pursuant to Federal Rules of Civil Procedure 26. And,</p> <p>15 Dr. DiTolla, I'll just represent to you, this is a</p> <p>16 document that was served by Glidewell in the litigation</p> <p>17 providing information on facts or witnesses associated</p> <p>18 with the case.</p> <p>19 (Whereupon, Exhibit 50 was marked</p> <p>20 for identification.)</p> <p>21 BY MR. JANKOWSKI:</p> <p>22 Q. And if you turn to the second page of the</p> <p style="text-align: right;">Page 222</p>	<p>1 knowledge. It's e-mail from Dennis. It's time spent</p> <p>2 with Dennis at lectures. And the BruxZir product has</p> <p>3 kind of flipped the dental market around, and it's the</p> <p>4 number one lecture that the dental societies want and</p> <p>5 that the doctors ask for as well. And it's been -- as</p> <p>6 the first person to come to market with it, and it's</p> <p>7 been something that's been clearly associated with us</p> <p>8 and our educational pieces and everything we've done in</p> <p>9 the magazine and...</p> <p>10 Q. Now, you said "the number one lecture." I</p> <p>11 don't know what you're referring to. What lecture is</p> <p>12 that?</p> <p>13 A. Oh, I'm just referring to the fact that when</p> <p>14 dental societies call up and want a lecture, and I say,</p> <p>15 "What are you guys interested in hearing?" that's what</p> <p>16 they want to hear about is monolithic restorations.</p> <p>17 They want to hear about e.max and BruxZir.</p> <p>18 Q. So that lecture is not specific to "BruxZir"</p> <p>19 with a Z though; right?</p> <p>20 It also includes other products like the e.max</p> <p>21 product; correct?</p> <p>22 A. Correct.</p> <p style="text-align: right;">Page 224</p>
<p>1 document, you'll see there's a reference to yourself</p> <p>2 with an indication that you are a witness with knowledge</p> <p>3 regarding the strength of the trademark.</p> <p>4 Do you see that?</p> <p>5 A. Uh-huh.</p> <p>6 Q. What knowledge do you have -- let me ask you</p> <p>7 just generally, what knowledge do you have regarding the</p> <p>8 strength of the trademark? And the trademark here would</p> <p>9 be a reference to "BruxZir," B-r-u-x-Z-i-r.</p> <p>10 A. I'm not sure I understand the question in</p> <p>11 regards to strength of the trademark. That's kind of a</p> <p>12 legal term that I'm not familiar with it.</p> <p>13 Q. Well, let me ask the question this way: What</p> <p>14 facts are you aware of that indicate that "BruxZir,"</p> <p>15 B-r-u-x-Z-i-r, is an indicator of Glidewell as the</p> <p>16 source of the product to the relevant purchasing</p> <p>17 population of customers?</p> <p>18 A. That "BruxZir" with a Z is identified with</p> <p>19 Glidewell?</p> <p>20 Q. Correct. What personal knowledge do you have</p> <p>21 that pertains to that?</p> <p>22 A. Oh, well, you said facts. It is all personal</p> <p style="text-align: right;">Page 223</p>	<p>1 Q. When you're lecturing, are you referring to,</p> <p>2 you know, full-contour zirconia products generally, or</p> <p>3 are you referring just to Glidewell's BruxZir products?</p> <p>4 A. Everything I show is a Glidewell BruxZir case</p> <p>5 that was done in the lab, but I use the terms</p> <p>6 interchangeably for educational purposes.</p> <p>7 Q. Use which terms interchangeably?</p> <p>8 A. "BruxZir crown" and "full-contour zirconia." I</p> <p>9 want to drive it into them and make sure they walk away</p> <p>10 knowing that it's a solid zirconia crown, in addition to</p> <p>11 showing them what it looks like.</p> <p>12 Q. When you say "BruxZir" and "full-contour</p> <p>13 zirconia" are used interchangeably, you're saying</p> <p>14 "BruxZir" with a Z?</p> <p>15 A. Yes, "BruxZir" with a Z.</p> <p>16 Q. Okay. And --</p> <p>17 A. And the audience knows that.</p> <p>18 Q. Okay.</p> <p>19 A. And it's not -- and the reason Glidewell's not</p> <p>20 involved is that I'm able to refer to those 180 labs</p> <p>21 that we've talked about several times too.</p> <p>22 Q. Right.</p> <p style="text-align: right;">Page 225</p>

Pages 222 to 225

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 A. I'm not there trying to say, "Hey, send your
2 stuff to Glidewell." I'm saying, "Hey, here's e.max.
3 Here's BruxZir. Here's these new modern restorations.
4 Here's how they can be used, and you don't have to send
5 it to us. You can send it to your local laboratory, if
6 they're an authorized user" kind of thing.
7 Q. Now, there are other full-contour zirconias
8 providers --
9 A. Yes, there are.
10 Q. And your audience is aware of that as well;
11 correct?
12 A. They probably are, yeah, if they've been
13 looking through trade journals and things like that.
14 Q. You say they probably are. Your lecture
15 doesn't educate them about that; is that correct?
16 A. I refer to other -- just like I did in the
17 introduction, I said there's probably 11 other kind of
18 generic alternatives. So, yeah, I always refer to the
19 fact that there are other materials available besides
20 ours.
21 Q. Do you have any videotapes of this lecture that
22 you've given? Do you maintain an archive of them?
Page 226

1 A. No, we really don't. They're all over the
2 country in Holiday Inns and Westins and convention
3 centers, and there's typically nobody there --
4 Q. Are they videotaped by --
5 A. -- to tape it.
6 Q. -- the dental societies?
7 A. Not really. That used to be something that
8 happened at the larger meetings. Videotaping stopped a
9 long time ago and then some audiotapes for a few years
10 after that, but there's not much taping done anymore.
11 They really are trying to get attendees to show up at
12 the meeting so they can tell the exhibitors, "There will
13 be 3,000 dentists here."
14 Q. Now, separately from the lectures -- or,
15 actually, it could even be in connection with the
16 lectures, is it your testimony that you can tell from
17 your conversations with dentists that the term
18 "BruxZir," B-r-u-x-Z-i-r, is associated with Glidewell
19 as the origin of the good?
20 A. I'm not sure I understand what "origin of the
21 good" means.
22 Like, for example, if they order it from one of
Page 227

1 the 180 partner laboratories, the BruxZir originated
2 from us, but their local laboratory made it. It's a
3 Glidewell product sold through another laboratory.
4 Q. Okay. That's an excellent point.
5 So when a dentist is ordering BruxZir with a Z
6 from an authorized lab, does the dentist know that
7 Glidewell is somehow associated with the product?
8 A. If they're-- yeah, all the advertisements that
9 we do with it, I don't know how they wouldn't know it's
10 associated with it. We've created the market for this
11 material, for the full-contour zirconia material.
12 Q. Do they know it from the prescription form that
13 the dentists use?
14 A. Actually, some of our partner laboratories do
15 get our prescription. If you remember that one letter,
16 the Nicole Fallon one, it said there was going to be
17 four Rx slips on there. So it's an actual prescription
18 slip that's the \$20 off coupon, and some of our partner
19 labs get those. We sent them to the dentist, and the
20 dentist sends it to the partner lab on ours requesting
21 the discount -- on a Glidewell Rx to those partner labs,
22 and the partner labs call and say, "Do we have to honor
Page 228

1 this \$20 off?"
2 Q. The \$20 coupon is like connected to the
3 prescription form or --
4 A. Yes. It is the prescription form.
5 Q. Oh, okay.
6 A. They're one and the same.
7 MR. JANKOWSKI: This will help. Let me show
8 you what's been previously marked as Exhibit 35. It's
9 is an assemblage of documents. It's six pages long, and
10 the last four pages bear Production Nos. KDA-002782,
11 2788, 2784 and 2786.
12 I'm sorry. It's more than six pages long.
13 It's actually twelve pages long. It's two-sided. And
14 it also includes within it --
15 THE WITNESS: Well, it's really just the front
16 page that we're interested in. The back is just the
17 terms and warranty.
18 MR. JANKOWSKI: Right. There's also a
19 reference to GL-107, a Glidewell-produced document.
20 (Whereupon, Exhibit 35 was marked
21 for identification.)
22
Page 229

Pages 226 to 229

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 BY MR. JANKOWSKI:
2 Q. Dr. DiTolla, do you recognize these as
3 prescription forms associated with Glidewell
4 Laboratories?
5 A. Yes.
6 Q. And you've seen these before; correct?
7 A. I have.
8 Q. These are made by Glidewell in the ordinary
9 course of business for use by dentists; correct?
10 A. Yes. The top two specifically are sent out in
11 targeted market pieces, and then the rest are just
12 normal, nondiscounted prescriptions that would go out to
13 dentists when they needed prescription slips that
14 weren't part of a promotion for something. So there's
15 no discount on this last form.
16 Q. So for these particular prescription forms, to
17 the extent these are used -- I see "Glidewell
18 Laboratories" identified on the prescription form at the
19 upper left. Do you see that?
20 A. Yes.
21 Q. Do the authorized laboratories get any
22 prescription forms from dentists for Glidewell's BruxZir
Page 230

1 with a Z product that don't have "Glidewell
2 Laboratories" on it?
3 A. One more time.
4 Q. Sure.
5 Can a dentist order a BruxZir with a Z product
6 from an authorized laboratory using a prescription form
7 that doesn't say "Glidewell Laboratories" on it?
8 A. Sure. From one of the lab's own Rx forms.
9 Q. Because they might have their own forms that
10 don't say "Glidewell" on them?
11 A. That's correct.
12 Q. Okay.
13 A. It would have the BruxZir name on it, of
14 course.
15 Q. Uh-huh. And have you seen the prescription
16 forms like that from the other laboratories?
17 A. I have not.
18 Q. So you really don't know what it says on it.
19 A. No. I would assume it would look a lot like
20 those slips.
21 Q. That we were looking at earlier?
22 A. Yeah, except it would just have it spelled
Page 231

1 correctly.
2 Q. And so, so far we've talked about -- you
3 believe dentists will connect the "BruxZir" with a Z
4 name to Glidewell based on your lectures and based on
5 the prescription forms that we've been looking at as
6 previously marked Exhibit 35; correct?
7 Are there other --
8 A. Yeah, even if they use the lab's -- the
9 authorized lab's own prescription slip, the chances are
10 they've received this in the mail from us. They may not
11 want to use it with us. They may just still order it
12 through the lab, but it's a part of establishing that
13 this is our product as part of the marketing that we do.
14 Q. Because this is sent out to -- why do you think
15 they have this sent by Glidewell?
16 Is this sent to every dentist in the country,
17 or how do they have this?
18 A. No, it's usually targeted -- these are good
19 questions for Jim Shuck, but they're usually targeted to
20 40,000 or 50,000 dentist clusters that might have a
21 certain -- maybe they tried it once and haven't used it
22 in the last six months or something like that. And then
Page 232

1 there's times where it's blanketed to all, roughly,
2 80,000 people on the mailing list, I think.
3 Q. But this isn't an area that you're -- that's
4 Jim Shuck's area, not your area; correct?
5 A. Yes, correct. And he probably already went
6 over most of that in his testimony, I'm guessing.
7 Q. Are you aware of other facts for why you
8 believe dentists associate "BruxZir" with a Z with
9 Glidewell beyond those that we've talked about already?
10 A. Just the huge number of restorations that we're
11 doing through our single location, which is equal to the
12 number of crowns that all the 180 locations are doing
13 combined. You know, we're doing 60,000 a month, and
14 between them all, they're doing about 60,000 a month
15 too. So...
16 Q. So right now the restorations that involve the
17 BruxZir with a Z product, approximately half are done by
18 Glidewell Labs directly; correct?
19 A. Correct.
20 Q. And the other half are done by the 180 or so
21 authorized labs.
22 A. Correct.
Page 233

Pages 230 to 233

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1 Q. Is that percentage changing over time?
2 A. I don't know. That was accurate last year when
3 I made that. I actually kind of said that on that
4 introduction, and so it was accurate at some point in
5 mid-2011, and I'm not sure if that's shifted or not.
6 Q. Do you know who within Glidewell would be
7 keeping track of that information?
8 A. Jim Shuck.
9 Q. Jim Shuck?
10 Have you had conversations with dentists
11 personally, just one-on-one, that lead you to believe
12 they associate the "BruxZir" with a Z name with
13 Glidewell?
14 A. Yes, and it seems like I get a lot of the
15 questions from the industry, you know, about -- by
16 default, about full-contour zirconia crowns because we
17 are so associated with BruxZir. But, yes, I have
18 conversations with dentists where -- in fact, a lot of
19 them don't know that the authorized labs exist and think
20 that they have to send it out to us.
21 Q. And on what occasions do you have these
22 conversations?
Page 234

1 A. Customer service might pass somebody through to
2 me. At the lectures, people coming up saying, "I want
3 to do some BruxZir crowns with you guys." Whatever it
4 might be. I spend a lot of time with dentists out on
5 the road at these lectures.
6 Q. Why would customer service pass on a call to
7 you?
8 I mean, that's their job, right, is to deal
9 with the customer, so this must be exceptional, right,
10 that they get you involved?
11 A. Yes, it's not a routine thing where they get me
12 involved. They'll typically put somebody into my
13 voicemail if they say they know me or they met me at a
14 lecture or I told them to call, but typically they'll
15 forward more of the technical questions that they just
16 can't answer.
17 So customer service has a good working
18 knowledge of the products, but they can't handle a
19 question -- I got an e-mail yesterday or two days ago
20 from a guy saying, "Can I sandblast the inside of my
21 BruxZir crowns prior to cementing them with 50-micron
22 aluminum oxide sandblasting?" and the customer service
Page 235

1 said, "Can you answer this? I have no idea how to
2 answer it." So it's usually those, where it's kind of
3 over their head.
4 Q. So in incidents like this, how do you know that
5 the customer associates "BruxZir" with a Z with
6 Glidewell?
7 A. They were writing to me at Glidewell asking a
8 question about BruxZir crowns. I don't know where
9 else -- who else they would write to.
10 Q. Okay. So now we're talking about written
11 correspondence. So you get letters?
12 A. Yeah, I get e-mails, again, through customer
13 service typically. But I put my e-mail address up when
14 I go out and lecture, so I get e-mails from dentists.
15 MR. JANKOWSKI: Mr. Tachner, I'd like a
16 production of these e-mails that he's referring to, the
17 written correspondence that he's saying is an indication
18 of customers writing to him that Glidewell will be
19 relying on to show the connection between BruxZir with
20 a Z and Glidewell as a source of goods.
21 MR. TACHNER: Okay. We'll do that.
22 MR. JANKOWSKI: I think -- I'm done with my
Page 236

1 questions subject to any questioning that Mr. Tachner is
2 going to have.
3 MR. TACHNER: I have no questions.
4 MR. JANKOWSKI: Okay. Then I think we're done
5 for the day. Thank you very much, Dr. DiTolla.
6 THE WITNESS: Thank you. That was relatively
7 painless.
8 MR. JANKOWSKI: Like a trip to the dentist.
9 (Laughter.)
10 THE VIDEOGRAPHER: Off the record at 4:17 p.m.
11 (At 4:17 p.m., the deposition of
12 MICHAEL DITOLLA was adjourned.)
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Page 237

Pages 234 to 237

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

1	STATE OF CALIFORNIA)
2	COUNTY OF LOS ANGELES) SS.
3	
4	I, AUDRA E. CRAMER, CSR No. 9901, in and for the
	State of California, do hereby certify:
5	That, prior to being examined, the witness named
6	in the foregoing deposition was by me duly sworn to
	testify the truth, the whole truth and nothing but the
7	truth;
	That said deposition was taken down by me in
8	shorthand at the time and place therein named, and
	thereafter reduced to typewriting under my direction,
9	and the same is a true, correct and complete transcript
10	of said proceedings;
11	I further certify that I am not interested in the
12	event of the action.
13	Witness my hand this 15th day of October,
14	2012.
15	
16	
17	
18	
19	
20	Certified Shorthand
21	Reporter for the
22	State of California

Page 238

1	Michael DiTolla c/o
2	Leonard Tachner PLC
	17961 Sky Park Circle, Suite 38-E
3	Irvine, CA 92614-6364
4	
5	Case: James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.
6	Date of deposition: October 2, 2012
	Deponent: Michael DiTolla
7	
8	Please be advised that the transcript in the above
9	referenced matter is now complete and ready for signature.
10	The deponent may come to this office to sign the transcript,
11	a copy may be purchased for the witness to review and sign,
	or the deponent and/or counsel may waive the option of signing.
12	Please advise us of the option selected.
	Please forward the errata sheet and the original signed
13	signature page to counsel noticing the deposition, noting the applicable
14	time period allowed for such by the governing Rules of Procedure.
15	If you have any questions, please do not hesitate to call our office at
16	(202)-232-0646.
17	
18	Sincerely,
19	
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9	Witness Name: Michael DiTolla
	Deposition Date: October 2, 2012
10	
	I do hereby acknowledge that I have read
11	and examined the foregoing pages
	of the transcript of my deposition and that:
12	
	(Check appropriate box):
13	() The same is a true, correct and
	complete transcription of the answers given by
14	me to the questions therein recorded.
15	() Except for the changes noted in the
16	attached Errata Sheet, the same is a true,
17	correct and complete transcription of the
18	answers given by me to the questions therein
19	recorded.
20	
21	
22	DATE WITNESS SIGNATURE

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8	Witness Name: Michael DiTolla
9	Deposition Date: October 2, 2012
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22	Signature Date

Page 241

Pages 238 to 241

10/2/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Michael DiTolla

Page 238

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) SS.
3

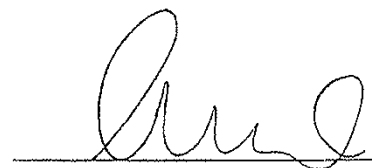
4 I, AUDRA E. CRAMER, CSR No. 9901, in and for the
State of California, do hereby certify:

5 That, prior to being examined, the witness named
6 in the foregoing deposition was by me duly sworn to
testify the truth, the whole truth and nothing but the
7 truth;

8 That said deposition was taken down by me in
shorthand at the time and place therein named, and
thereafter reduced to typewriting under my direction,
9 and the same is a true, correct and complete transcript
10 of said proceedings;

11 I further certify that I am not interested in the
12 event of the action.

13 Witness my hand this 15th day of October,
14 2012.
15
16
17

18 
19

20 Certified Shorthand
21 Reporter for the
22 State of California